S. HRG. 99-192

INTERNATIONAL AIR TRANSPORTATION PROTECTION ACT OF 1985

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1218

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR THE REVOCATION OF CERTAIN CERTIFICATES FOR AIR TRANSPORTATION, AND FOR OTHER PURPOSES

JUNE 12, 1985

Printed for the use of the
Committee on Commerce, Science, and Transportation

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THE INTERNATIONAL AIR TRANSPORTATION PROTECTION ACT OF 1985

WEDNESDAY, JUNE 12, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the committee) presiding.

Staff members assigned to this hearing: Steve Johnson, Chuck Doyle, staff counsels; and Steve Palmer, minority professional staff member.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. This is a hearing on S. 1218, which was introduced about a week and a half ago. It is a bill which has numerous cosponsors. A strong majority of the members of this committee are cosponsors. Senator Eagleton has been a leader in this effort. Senator Dole, our majority leader, is a cosponsor. My hope is that this bill can be reported out of the Commerce Committee tomorrow and reach the floor at a very early date.

The perceived threat that the bill is directed toward is the case of a hostile takeover of an airline, followed by an attempt to liquidate that airline. The specific threat is the concern that has been expressed by a number of us that TWA may be taken over by Mr. Carl Icahn, who is now a one-third owner of the airline, and then sell off the airlines component parts.

Mr. Icahn denies this. He has stated in court, before congressional committees, in oral comments, and in writing to me, that he intends to operate TWA. He has also stated to me that he does not oppose this bill because he does not intend to liquidate the airline.

On the other hand, people have called that into question. Many have stated that they believe that Mr. Icahn does not operate businesses, but rather liquidates them for profit. As a result, there is great concern about the liquidation of the airline.

This bill has, as its underlying premise that what Government grants for free, specifically, international route certificates for commercial air transportation, should not be sold as part of the liquidation of an airline. Any attempt to sell off the international routes subsequent to a hostile takeover should trigger the reversion of those routes to their original source, the Federal Government.

It is thought that this bill would have the effect of providing a significant deterrent to a subsequent liquidation of TWA or of any other airline.

Senator Kassebaum, do you have a statement?

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. Thank you, Mr. Chairman. I do have a statement and although you will be chairing this hearing this morning because of TWA's unique position at the moment, I believe this issue raises tough questions that go beyond hostile takeovers. In my mind the fundamental question is whether international routes should be transferrable.

Is it in the public interest to allow these routes to be bought and sold like airplanes, or should the routes be subject to a full carrier selection proceeding when their holders no longer desire to serve those markets?

I think we should have a followup hearing devoted to exploring the status of these international certificates. Now, in case anyone is wondering and perhaps taking these meetings beyond their intent, I would like to comment briefly on the United/Pan Am route sale.

I am confident that this transaction will get the full examination by the Department of Transportation that it warrants. I have no desire to inject Congress into that process. I do want to explore what our future role should be regarding such sales. But I do not believe that we should retroactively change the statutes governing the United/Pan Am deal which were in place when it was consummated.

Congress' role in this sale should be restricted to making sure that all interested parties have a fair opportunity to be heard.

Thank you, Mr. Chairman. I believe this is a very important hearing and I regret that I will not be able to participate as fully as I would like, due to my participation in the budget conference.

The CHAIRMAN. Thank you, Senator Kassebaum.

Senator Inouye, do you have a statement?

Senator INOUYE. No, I have no statement, Mr. Chairman. But I am here because I agree with you this is a very important matter.

I do have a statement from Senator Hollings.

[The statement and bill follow:]

OPENING STATEMENT BY SENATOR HOLLINGS

Today's hearing is one of the first opportunities since we passed airline deregulation in 1978 to examine how the free market in aviation is really working. What we are seeing is a whole new breed of operators moving into an arena freed of all economic regulation.

Trans World Airlines is the nation's fifth largest airline, serving cities in Europe, the Mideast, and the Caribbean. Routes to these markets were awarded to TWA based on what was then the airline's operational and marketing capabilities and intentions.

Mr. Icahn's interest in taking over TWA presents a potentially different approach to airline management. In this light, should he be denied the opportunity to take over TWA? Should we make it impossible for someone moving into the airline business the opportunity to make a quick profit at the public's expense? Or should we do noting at all, leaving the free market to do its work, as so many who support deregulation have wanted? Personally, I find it ironic that since deregulation it has been the airlines that most vigorously have opposed government intervention and yet, once threatened, they are among the first to seek legislative relief.

With today's hearing we will consider these factors, keeping in mind both the TWA situation and the effect S. 1218 would have on future airline transactions. Today's witnesses will hopefully shed some light on the need for this legislation, and I look forward to hearing their testimony.

99TH CONGRESS
1ST SESSION

S. 1218

To amend the Federal Aviation Act of 1958 to provide for the revocation of certain certificates for air transportation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, APRIL 15), 1985

Mr. DANFORTH (for himself, Mr. EAGLETON, Mrs. KASSEBAUM, Mr. GOLDWATER, Mr. PRESSLER, Mr. GORTON, Mr. STEVENS, Mr. TRIBLE, Mr. LONG, Mr. INOUYE, Mr. FORD, Mr. RIEGLE, Mr. EXON, Mr. GORE, Mr. ROCKEFELLER, and Mr. DOLE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To amend the Federal Aviation Act of 1958 to provide for the revocation of certain certificates for air transportation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "International Air Transportation Protection Act of 1985".

FINDINGS AND PURPOSE

SEC. 2. (a) Congress finds that—

(1) the United States and its citizens rely on the provision of dependable and safe international air transportation;

(2) the Department of Transportation is responsible, under the Federal Aviation Act of 1958 (49 App U.S.C. 1301 et seq), for ensuring that certificates for the provision of such air transportation are issued only to applicants who are fit, willing and able to provide such transportation, and that any person to whom such a certificate is issued continues to be fit, willing, and able to provide such transportation; and

(3) hostile takeovers of air carriers may jeopardize the provision of such transportation in a dependable and safe manner.

(b) It is the purpose of the Congress in this Act to provide that certificates for the provision of international air transportation shall be revoked by the Secretary of Transportation in certain circumstances, consistent with the provisions of this Act.

REVOCATION OF CERTIFICATES

SEC. 3. Section 401 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371) is amended by adding at the end thereof the following subsection:

"(s)(1) As used in this subsection, the term—

"(A) 'hostile takeover' means any acquisition of a majority of the stock, share capital, or assets of an air carrier which is not approved by a majority (consisting of at least two members) of the independent members of the board of directors of such air carrier; and

"(B) 'independent', when applied to a member of a board of directors of an air carrier, means that the member is not an officer or employee of the air carrier and has no substantial financial or commercial ties to the air carrier other than the ownership of the air carrier's stock.

"(2) The Secretary shall, in order to effectuate the declaration of policy set forth in section 102(a) of this Act, exercise the Secretary's authority contained in subsections (g) and (r) of this section and revoke a particular certificate for the provision of international air transportation issued to an air carrier if the Secretary establishes, in accordance with paragraph (3) of this subsection, that a hostile takeover of such air carrier occurred on or after May 23, 1985 and that a sale or transfer, or attempted sale or transfer, of such certificate occurred on or after such date as part of the liquidation of such air carrier or other than in the ordinary course of such air carrier's business.

"(3) Notwithstanding any other provision of law, the Secretary shall carry out the activities required under paragraph (2) of this subsection on an expedited basis.

"(4) Nothing in this subsection shall be construed to preclude the Secretary from issuing any certificate for the provision of international air transportation which is revoked under this subsection either to the air carrier which previously held such certificate or to any other applicant, if the Secretary finds that—

"(A) such air carrier or applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and any rules, regulations, and requirements issued under this Act; and

"(B) such transportation is consistent with the public convenience and necessity.".

The CHAIRMAN. Senator Eagleton, thank you for being with us.

STATEMENT OF HON. THOMAS EAGLETON, U.S SENATOR FROM MISSOURI

Senator EAGLETON. Thank you very much, Mr. Chairman. I am delighted to be here.

First let me say at the outset that this is no longer simply a TWA matter. It is an airline industry matter. It affects an airline, for instance, that impacts mightily on the State of Hawaii. Just yesterday, United Airlines, which is on strike as we all know, announced that they were taking defensive mechanisms to make them less attractive to takeover vultures, and diverted $962 million, a not insignificant amount of money in excess assets in their employee pension plan and diverted it to some other account that their accountant said would make it immune, as it were, from the takeover vultures.

We have a new breed of creature afoot in America, Mr. Chairman; in corporate America, that is. That is, the predator takeover artist. Some of them have become famous or infamous, and they have accrued billions or millions and millions and millions of dollars by attacking American corporations, badgering them, intimi-

dating them, and then in the end in most instances, being paid off in what is called "green mail," being paid money to go away, sizeable amounts of money.

And one of the more notorious in this pursuit is the gentleman who is pursuing TWA, Mr. Carl Icahn. I ask unanimous consent to put in the record at this point TWA's request to the Department of Transportation in which they itemize Mr. Icahn's record before various security agencies around the country, including the Federal SEC and the Florida Commission.

The CHAIRMAN. Without objection.[1]

Senator EAGLETON. Now the question is, what do you do with Carl Icahn, Sol Steinberg, et cetera? There is what I take it to be the Ronald Reagan school of thought, as exemplified through the Department of Transportation and the Federal Communications Commission, that this just epitomizes free enterprise; that predator raiders are the second coming of our founding fathers; and that for them to just ravage and savage American corporations is just red, white, and blue free enterprise. Don't touch them; leave them alone; let the marketplace decide.

We hear that quite often.

The CHAIRMAN. In not quite those words.

Senator EAGLETON. Not quite in those words. To me that is poppycock, especially when you are dealing with regulated industries like airlines, like television networks, et cetera, that have to be operated in the public interest, convenience, and necessity, and wherein there must be a test of fitness. You have to be fit to operate an airline. You have to be fit to operate a network.

The Secretary of Transportation just recently, I think it was Monday of this week, came down with her order denying TWA's application, and I ask unanimous consent that the full order denying application issued on June 6 by the Secretary of Transportation be printed at this point in the record.

The CHAIRMAN. Without objection.

[The document referred to follows:]

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[1] The document has been retained in the Committee files.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

SERVED JUN 10 1985

Issued by the Department of Transportation
on this 10th day of June, 1985

APPLICATION OF TRANS WORLD AIRLINES, INC. ("TWA") FOR THE INSTITUTION OF AN INVESTIGATION ON ITS PROSPECTIVE CONTINUING FITNESS UNDER SECTION 401(r) OF THE FEDERAL AVIATION ACT IN THE EVENT CARL C. ICAHN SECURES CONTROL OF TWA AND FOR AN AMENDMENT OF ITS CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND OTHER RELIEF UNDER SECTION 401(g) OF THE ACT	Docket 43135

ORDER DENYING APPLICATION

Having carefully considered TWA's Application and all of the comments filed in response, the Department finds that while it has jurisdiction to institute an investigation of TWA's continuing fitness, such action would be appropriate only in the rare and exceptional case and no such action is warranted here. TWA has failed to set forth the compelling prima facie case essential to justify such a proceeding in these circumstances.

BACKGROUND

On May 16, 1985, Trans World Airlines (TWA) filed an Application asking us to investigate its prospective continuing fitness under section 401(r) of the Federal Aviation Act (Act), 49 U.S.C. 1371(r), in the event that Mr. Carl C. Icahn gains control of the carrier. In support of its Application, TWA alleged that: 1) Mr. Icahn and companies he controls ("Mr. Icahn") own at least 20% (as of the date of the filing) of TWA's outstanding common stock and seek immediate control of TWA; 2) Mr. Icahn's record of several consent decrees with the SEC and of enforcement actions by several state agencies indicates that he does not have the disposition to comply with the law; 3) his financing for the purchase of TWA stock may in part come from foreign banks, raising the issue of foreign control of an airline; 4) his investment group has no experience in airline management; 5) his investment group might have financial interests in other aeronautics enterprises, requiring specific approval of the Department for the acquisition of TWA; and 6) his history as a "corporate pirate" shows that his financial and operational plans for TWA would be highly disruptive to TWA's continued operation and fitness as an air carrier. In addition, TWA argues that the intention of Mr. Icahn to merge TWA with a corporation formed for that purpose would be unlawful, absent prior approval of the Department under section 401(h) of the Act and review by the President pursuant to section 801 of the Act. TWA also filed a motion for expedited treatment and asked that the Department act to stop Mr. Icahn from acquiring additional TWA stock before he takes control of TWA.

On May 17, 1985, we issued a Notice to All Parties that responses to TWA's Application should be filed by May 28. 1/ Several civic groups and other persons filed comments in support of TWA's Application: the St. Louis and Kansas City Chambers of Commerce, the Missouri Parties, the Port Authority of New York and New Jersey, the Cities of St. Louis and Kansas City, the Los Angeles Department of Airports, the Air Line Pilots Association, and the City of Memphis. 2/ Their support is based primarily upon the perceived economic consequences if Mr. Icahn acquires control of TWA and dismantles the company. In addition, there have been several letters to the Department from members of Congress: for example, Senators Alfonse M. D'Amato and Thomas F. Eagleton expressed concern about the possible selling off of assets of the carrier if Mr. Icahn gained control and eight members of the Missouri delegation wrote to ask for an investigation under the Department's continuing fitness authority.

Mr. Icahn filed an Answer opposing TWA's Application. Mr. Icahn asks that we dismiss TWA's Application because: (1) DOT has no authority to grant the relief requested by TWA, since it cannot review an acquisition of control of TWA by a person not connected to the transportation industry; (2) although DOT does have authority to institute a fitness investigation should he gain control of TWA, he does not now have such control, and the Department should not exercise its continuing fitness power to regulate changes in control of TWA; and (3) there is no evidence to suggest that TWA will be unfit if he should gain control of the carrier.

Mr. Icahn characterizes TWA's Application as an attempt to have the Department regulate the acquisition of a carrier by requiring its fitness approval in advance of any acquisition. He asserts that the Department has no authority to grant the relief requested by TWA because Congress, when it passed the Airline Deregulation Act of 1978, specifically withdrew authority to review acquisitions of air carriers by persons not involved in the transportation industry.

He also urges that the Department not exercise its continuing fitness authority under section 401(r) of the Act at this time as requested by TWA, since he does not yet control TWA. Such a step, he asserts, would be tantamount to an exercise of the powers Congress specifically rescinded in the Deregulation Act.

According to Mr. Icahn, he and all members of the partnerships involved in his stock purchase are U.S. citizens and all funds used to purchase stocks have and will come from U.S. investors or financial institutions. He asserts that no person, partnership, or corporation involved in the acquisition is substantially engaged in the business of aeronautics. Mr. Icahn also states that, contrary to TWA management's claims, he has no intention of dismantling TWA if he gains control. Along with his statement to this effect in his filing here, he points to the May 28 decision of the U.S. District Court, TWA v. Icahn, No. 85 Civ. 3677 (JMC) (S.D.N.Y. May 28, 1985), denying TWA's motion for a restraining order against further stock acquisitions, where the court concluded that it could not infer from Mr. Icahn's past conduct that he has a plan that "most likely implicates the sale of major assets or a 'greenmail' attempt."

Mr. Icahn also addresses compliance disposition issues raised by TWA. He points out that his companies are in good standing with the many regulatory bodies, including the SEC, New York Stock Exchange, and several State agencies, that oversee the securities industry. He argues that TWA has overstated the nature and magnitude of his past consent decrees with the SEC. According to Mr. Icahn, none of these proceedings involved an adjudication of wrongdoing, and all were settled without an admission of guilt. Mr. Icahn further argues that, because he does not intend to merge TWA into a new corporation and transfer TWA's assets to that corporation, no Department approval under section 401(n) of the Act or Presidential review under section 801 of the Act is required.

On May 29, TWA filed a Reply contending that Mr. Icahn's Answer is irrelevant, asserting that: (1) TWA seeks relief under section 401(r) (continuing fitness requirements), not under section 408 (approval of a control relationship), and DOT has authority to conduct a fitness inquiry prior to acquisition of a carrier by a person suspected of being unfit; and (2) serious questions have been raised regarding Mr. Icahn's fitness. On June 3, Mr. Icahn filed an Answer to TWA's Reply, asking that we not accept TWA's Reply, since the issues have been defined and argued in prior pleadings, and again asserting that TWA has failed to establish that the Department has jurisdiction to institute a fitness investigation at this time and has also failed to show that such an investigation is warranted. 3/ On June 5, TWA filed a motion requesting that the Department hold oral argument on the jurisdictional issue raised by Mr. Icahn.

LEGAL ISSUES

1. Jurisdiction

TWA presented evidence that Mr. Icahn has acquired a large portion of TWA's outstanding stock, and that he has stated his intention to acquire, and has taken steps to acquire, control of the carrier. TWA has, therefore, asked us to determine whether it will continue to be fit in the event Mr. Icahn gains control. In essence, it has asked us to determine, in advance of his actual control of the carrier, whether Mr. Icahn himself meets our fitness standards. TWA asserts that we have jurisdiction to conduct such a fitness investigation under section 401(r) of the Act. Under section 401(r), the requirement that a carrier be fit, willing, and able to perform air transportation and to hold a certificate is a continuing one. We use a three-part fitness test focusing on managerial experience, finances, and disposition to comply with the law. The Department can modify, suspend, or revoke the certificate of a carrier if, after notice and hearing, it finds the carrier has failed to comply with this continuing requirement.

Mr. Icahn asserts that we have no jurisdiction to review his acquisition of control of TWA, since the Airline Deregulation Act (Pub. L. 95-504) eliminated the requirement of prior government approval of an acquisition of a carrier by a person with no substantial aeronautical interest. He argues that he does not yet control TWA and that, if the Department were to assert jurisdiction under section 401(r) at this time, it would be circumventing the intent of Congress that the government not intervene in such changes in ownership.

The Department strongly agrees that it should not routinely intervene in changes in airline ownership. And this is clearly the intent of Congress as well. Before 1978, the Act required Board approval for an acquisition of control of an air carrier by "any person," a requirement added in 1969. The Airline Deregulation Act of 1978 struck the "any person" language from section 408. The Senate committee explained this change as follows, S. Rep. No. 95-631, 95th Cong., 2d Sess. (1978) at 77:

> Upon reflection it now appears best to leave supervision of these types of transactions to the antitrust laws. In essence, this provision protects incumbent managers from the threat that any person or firm believing it can more profitably and effectively operate the carrier will be able to purchase a significant share of the firm's stock for the purpose of influencing carrier policy. In nonregulated industries, this threat of a takeover helps insure that managements have every incentive to profitably operate their firms.

The House committee recommended for similar reasons that the Board's jurisdiction over control acquisitions be substantially narrowed, H.R. Rep. 95-1211, 95th Cong., 2d Sess. (1978) at 18:

> There would appear to be little need for CAB review of acquisitions of control of airlines by persons with no other aviation interests. Disclosure of these transactions will still be required by section 407 of the Federal Aviation Act and the securities laws. If an acquisition of control impairs a carrier's operating ability, it will suffer the competitive consequences which will occur in the more competitive environment established by this bill.

Congress clearly intended that carrier acquisitions by persons with no other transportation interests be free from the regulatory burdens once imposed under section 408(a)(5). However, the purposes of sections 408 and 401(r) are separate and distinct. The amendment to section 408 was not intended to eliminate our authority and responsibility under section 401(r) to ensure that carriers continue to be fit.

The purpose of section 408 is to protect the public against control transactions with potentially serious anticompetitive effects. Section 401(r) is not concerned with acquisition of control per se, nor with the competitive effects of acquisitions. Rather, its purpose is to ensure that carriers maintain their fitness to operate. Furthermore, a reading of the legislative history of the Deregulation Act shows that the purpose of the amendment to section 408 centered only on the desire to do away with unnecessary regulatory barriers to competition. There is no suggestion in the legislative history that Congress thus intended to abolish our authority to determine whether a carrier continues to be fit under new ownership or management. See S. Rep. No. 95-631, 95th Cong. 2nd Sess. (1978) at 76-78. Thus, a determination of the continuing fitness of a carrier under new ownership or management is not contrary to the intent of Congress in amending section 408. At the same time, we must be careful to avoid having this continuing fitness authority used as a substitute for the section 408 authority Congress eliminated in 1978.

Mr. Icahn concedes that, should he gain control of TWA, the Department has the authority to institute a fitness investigation under section 401(r). However, he urges the Department not to exercise its section 401(r) authority now because, he asserts, he does not yet "control" TWA and he claims that such an action would amount to an attempt to regulate control of an air carrier.

We disagree that the Department must decline to consider instituting a continuing fitness investigation based on Mr. Icahn's assertions that he does not "control" TWA.
If a compelling case were made that a carrier's continuing fitness to operate would be subject to serious question following a proposed acquisition, it clearly would be in the public interest for us to use the authority provided in section 401(r) as early as practicable to review the continued fitness of an air carrier. [4]/ For this reason, where the public interest was at risk, we have not refused to act where fitness was at issue merely because actual control of a carrier had not been conclusively established. Order 85-2-4, February 1, 1985 (Continuing Fitness of Golden West Airlines).

The issue of a carrier's continued fitness under new ownership or management may properly be the subject of a continuing fitness investigation under section 401(r). Orders 85-2-4, February 1, 1985 (Continuing Fitness of Golden West Airlines); 84-5-23, May 4, 1984 (Premiere Airlines Continuing Fitness Investigation); 83-9-86, September 19, 1983 (Midway (Southwest) Airway Co. Fitness Investigation); 82-4-84, April 15, 1982 (Application of Avia International Airlines and Challange Air Transport); and 80-12-26, December 5, 1980 (Application of Gifford Aviation, et al.). Moreover, whether a carrier is actually under the control of a particular person and therefore might not be fit to operate may appropriately be at issue in an initial fitness investigation (Order 85-3-85, March 29, 1985 Pan Aviation Fitness Investigation) as well as a continuing fitness investigation. Orders 85-2-4, February 1, 1985 (Continuing Fitness of Golden West Airlines), and 84-5-23, May 4, 1984 (Premiere Airlines Continuing Fitness Investigation).

In his Answer, Mr. Icahn admits to owning at least 25% of TWA's outstanding voting stock as of May 28, and has made public his intention of acquiring control of the carrier. [5]/ He has, in fact, already proposed to purchase all remaining outstanding shares of TWA. Under those circumstances, whether Mr. Icahn has the ability to control TWA is an issue that may properly be resolved in the context of a continuing fitness investigation under section 401(r) of the Act. Under these facts, we therefore do not accept Mr. Icahn's arguments that we cannot institute such an investigation because he does not yet control TWA. [6]/

While we find that we have the legal authority to institute a fitness investigation of a person before actual control of an airline has been acquired, it is our policy to use that authority only in the rare and unusual case. The Department does not intend through our authority under section 401(r) to be drawn into takeover attempts or other management disputes as a matter of course or to otherwise substitute unnecessary government regulation for the competitive pressures of the marketplace. As discussed above, the Department's routine involvement in takeover contests would be contrary to Congress' decision in the Airline Deregulation Act that prior Government approval was unnecessary whenever a new person acquired control of an air carrier. We do not believe that our section 401(r) authority should be exercised before control has been acquired unless at least two criteria are met: first, the likelihood of a change in control must be strong; and second, there must be a compelling prima facie case of a lack of fitness.

We agree with TWA that Mr. Icahn may well acquire control of the carrier. However, because TWA has not made out a compelling prima facie case of lack of fitness with respect to Mr. Icahn, we conclude that institution of a continuing fitness investigation pursuant to section 401(r) of the Act is not warranted.

2. Fitness

In its Application, TWA raises several issues that it claims are related to TWA's fitness, including Mr. Icahn's compliance disposition, his managerial experience, the possibility of foreign control or holdings by Mr. Icahn in aeronautical businesses, and the possibility that his financial and operational plans for TWA may be disruptive to its continued fitness.

a. Managerial Experience

There is no credible evidence that Mr. Icahn's control of TWA would deprive it of the managerial expertise necessary to meet our fitness standard. We do not require that a person controlling an air carrier have specific aviation experience; the test is met if that person has substantial business experience and the carrier's management team has the qualifications and experience needed to operate the carrier. See Order 85-3-9, March 4, 1985 (Application of Pegasus Airlines). We have been presented with no grounds to conclude that Mr. Icahn will be unable or unwilling to choose competent and experienced managers should he control TWA.

b. Financial and Operating Plan

TWA also claims that Mr. Icahn's reputation as a "corporate pirate" shows that his financial and operational plans would be so disruptive as to render the carrier unfit. We are not inclined to intrude at this time in a transaction such as this based on speculation of future actions that may be taken by the prospective new owner or management of a carrier. TWA has presented no credible evidence to demonstrate that Mr. Icahn's control of this carrier, even if he were to redeploy assets, would result in an unfit operation. 7/

c. Compliance Disposition

TWA contends that numerous administrative and judicial actions involving securities transactions by Icahn companies raise questions regarding his compliance disposition that must be resolved in a fitness hearing. These actions involved matters ranging from allegations by State or Federal authorities of failure of Icahn-controlled companies to comply with registration requirements to private suits involving takeover attempts and inaccurate reporting.

The Department regards compliance disposition as an important element in our fitness process and has not hesitated to act where there was substantial evidence of a person's lack of disposition to comply with the law and as a consequence, of an imminent risk to the public. For example, early this year we instituted a continuing fitness investigation of Golden West Airlines, prompted by our concern over the alleged control of the carrier by Mr. Kevin M. Von Feldt, who had a history of aviation enforcement problems involving the illegal sale of air transportation with resultant difficulties by prospective passengers in obtaining refunds. Order 85-2-4, February 1, 1985 (Continuing Fitness of Golden West Airlines). 8/

We find here, however, that the incidents cited by TWA do not provide a sufficient basis to institute a continuing fitness review. According to Mr. Icahn, in none of these instances has there been an adjudication of guilt or wrongdoing on his part. TWA does not controvert his account. More importantly, Mr. Icahn and his companies remain in good standing in the heavily regulated securities industry with the SEC, New York Stock Exchange, and various States. Based on this information, we find no compelling prima facie case of a compliance disposition problem that would justify investigation by the Department.

3. Certificate Transfer, Foreign Control, and Aeronautical Interests

TWA also asserts that the intention of Mr. Icahn to merge TWA with another corporation would violate section 401(h) of the Act, absent prior approval of the Department, and section 801 review by the President. 9/ Section 401(h) prohibits transfers of certificates without approval of the Department and section 801 provides for review by the President of any transfer of a certificate to engage in foreign air transportation. Certainly no certificate may lawfully be transferred unless the requirements of sections 401(h) and 801, as applicable, are met. However no steps yet have been taken that would trigger review under these sections. Therefore, we find no merit in TWA's argument. Nor has TWA presented evidence demonstrating foreign control or any interest by Mr. Icahn in any other aeronautical business, and in fact, Mr. Icahn specifically denies any foreign involvement and any other involvement in the business of aeronautics.

ACCORDINGLY

1. We deny the Motion of Trans World Airlines for expedited treatment;

2. We grant the Motion of the City of Memphis for leave to file its Answer late;

3. We grant the Motion of Trans World Airlines for leave to file its Reply;

4. We grant the Motion of Carl C. Icahn for leave to file his Answer to TWA's Reply;

5. We grant the Motion of Trans World Airlines to file its third amendment to its Application;

6. We deny the Motion of Trans World Airlines for an emergency order;

7. We deny the Motion of Trans World Airlines for oral argument; and

8. We deny the request of Trans World Airlines for the institution of a continuing fitness investigation under section 401(r) of the Federal Aviation Act.

By:

MATTHEW V. SCOCOZZA
Assistant Secretary
for Policy and International Affairs

1/ In its motion for expedited treatment which was filed later in the same day that we issued the Notice, TWA asked that responses be due no later than May 24. Since the date for filing responses was set by our Notice, we deny TWA's motion.

2/ Memphis' Answer was filed on May 31 and was accompanied by a Motion For Leave to File Late, on the basis that only on May 29 did it learn of the May 28 deadline for filing responses. Since it has shown good cause, we grant Memphis' Motion.

3/ Both TWA's Reply and Mr. Icahn's Answer to the Reply were accompanied by motions for leave to file their respective documents. We grant both parties' motions for good cause shown.

4/ In fact we require under section 204.4 of our regulations that certificated carriers notify us of proposed substantial changes in operations. This authority has been exercised in conjunction with alleged or proposed changes in ownership and management to review the continuing fitness of a carrier. Orders 85-2-4, February 1, 1985, (Continuing Fitness of Golden West Airlines) and 83-9-86, September 19, 1983 (Midway (Southwest) Airway Co. Fitness Investigation).

5/ Mr. Icahn's holdings are apparently increasing. According to his most recent filing with the SEC, Mr. Icahn owns 32.77% of TWA's outstanding shares.

6/ Since we have rejected Mr. Icahn's jurisdictional argument, we deny TWA's Motion for oral argument on that issue.

7/ In any event, TWA has failed to demonstrate that Mr. Icahn has any intention to redeploy the carrier's assets in the fashion alleged by TWA. TWA v. Icahn, No. 85 Civ. 3677 (JMC) (S.D.N.Y. May 28, 1985).

8/ Although in the course of our continuing fitness investigation we found Mr. Von Feldt was not entitled to use the Golden West name, by Order 85-5-45, May 8, 1985, we revoked the carrier's certificate pursuant to section 401(r) for reasons unrelated to Mr. Von Feldt's illegal activities. In a related court action, the Department had obtained a restraining order prohibiting Mr. Von Feldt from engaging in air transportation as Golden West. The Court also found him in contempt of an earlier order enjoining him from engaging in air transportation without requisite authority.

9/ This assertion is contained in TWA's third amendment to its Application. TWA also filed a Motion for Leave to File this document, since the date for filing responses had already passed. We grant TWA's motion.

Senator EAGLETON. If you read this document it is about eight or nine pages, two of which deal with fitness.

And in essence, if you read that statement by the Secretary of Transportation, the following individuals living or dead would be eligible to operate an American airline: Tommy "Fatso" Marson, Don Carlo Gambino, Richard "Nerves" Fusco, Jimmy "the Weasel" Fratriano, Joseph Gambino, Greg DePalma, and Frank Sinatra.

Any of those individuals, according to the criteria set forth by Mrs. Dole, would be fit to operate an American airline because she has not the test of fitness.

Good old free enterprise, is setting a bunch of stock, you get an airline and have at it. So it gets down to what we should do about it, Mr. Chairman. I think the bill that you have introduced along with numerous cosponsors, S. 1218, is excellent as far as it goes.

It bites off a limited hunk of the problem dealing with international air rights. That's fine. But I think something more is necessary at a bare minimum. At a bare minimum, there must be a public hearing held by the Department of Transportation when one of these characters seeks to take over a national airline, because it is TWA today, it is United tomorrow; who knows what airline is next? Who knows which guy is to strike?

And we must require, since Mrs. Dole is not willing to do it on her own—and really she has enough authority under existing law to do it if she had the wherewithal, the internal wherewithal to hold the hearing. But since she doesn't want to do that, then I think we have got to give her statutory authority and obligate her to do it. And so I have introduced S. 1267 that calls for a hearing and goes into financial responsibility and goes into who you are and what you are and what you're going to do with the airline. Are you going to junk it? Are you buying it for junk, Mr. Chairman?

There are hundreds of American corporations that today are worth more than their current price on the New York Stock Exchange as junk than their price on the exchange. There are hundreds of corporations that, if you take them apart piece by piece, and sell them for junk—this piece, this piece, this piece—you can get more than $19 a share, which is the last time I looked at TWA, or *x* dollars a share for X company.

So if part of restructuring America, as President Reagan said he would do, is to dismantle American corporations, then we ought to know about it. If part of restructuring America is to let Boone Pickens and Carl Icahn and Sol Steinberg do the restructuring, then we ought to know about it.

We ought to require a hearing. So that is in my bill S. 1267 and in one other section it says no "green mail" may be paid in an airline hostile acquisition. It is very simple. It just says if you get into this hostile airline acquisition business, Mr. Icahn or others, whoever takes on United, you're not going to be able to be paid off. No green mail. And that makes it thus less tempting for the raider to launch his expedition because he knows that under law he can't be paid off when his raid is successful.

And so I think those are things that ought to be added. I don't deem them to be all that controversial. I don't think requiring a hearing about the taking over of a national airline to me is very

controversial, and I don't think prohibiting green mail in an adverse or hostile airline acquisition is all that controversial.

But I am here to support S. 1218 and I am here to ask your consideration of S. 1267 or parts thereof as addendi thereto.

Thank you.

The CHAIRMAN. Senator Eagleton, thank you very much. Let me just say that having worked with Secretary Dole on a number of different issues, I have no doubt whatsoever about her wherewithal. She possesses great strength of character and deals with matters very effectively.

However, I may or may not agree with her conclusion with respect to examining the fitness of Mr. Icahn to operate TWA. In fact, I don't agree with it, but I do think that she is a first-rate Secretary of Transportation.

One of the principal assets of an airline that operates internationally is its overseas routes. If those routes were not available to be sold, then the prospect of dismantling the airline would not be particularly attractive.

With respect to the airplanes themselves, there would be a glut on the market, but it wouldn't be a very attractive liquidation as Mr. Icahn himself has said.

Do you think if we were to pass S. 1218—and I would hope we could do it pretty quickly—that it would have the effect of stopping an individual from liquidating the airline?

Senator EAGLETON. Well, I would hope it would. It is the most profitable aggregate within the TWA corporate setup, that is, the overseas routes.

I have no doubt, though, Mr. Chairman, that if Icahn gets ahold of TWA, that he will begin to sufficiently reduce and substantially reduce domestic routes.

Now, he needs feeder routes into his overseas routes. He needs to feed some people into New York so they can fly overseas, and he needs to feed some people into St. Louis, our home city, so that he can fly now his three routes, I think, out of St. Louis to fly overseas.

I know not whether those individual routes are profitable. They are fairly new. So he needs some feeder into his lines to make his overseas routes profitable, but he will shuck off and junk as many of the interior domestic routes of TWA as he can conceivably get away with.

He may seek then to try to operate TWA. He's got 34 percent of the stock, as you point out, as an international carrier, but he will junk as much as he can humanly possibly do, and I would say one of the first things he would see fit to junk would be the TWA overhaul base in Kansas City, a matter of significance to us because a lot of people work there who are your and my constituents Mr. Chairman.

I think your bill will be helpful, no doubt. It will give Mr. Icahn second thoughts no doubt. He may pray more for a white knight or, in this instance, a tattletale grey knight.

This thing gets so messy that you can't find pure Ivory soap white knights. They are hard to find. So you find Resorts International. And so that is a new breed of cat, a tattletale grey knight coming in to rescue the line.

Anyway, I suspect that before it is all over and done, Carl Icahn will have made a killing.

The CHAIRMAN. Senator Inouye.

Senator INOUYE. No questions, Mr. Chairman.

The CHAIRMAN. Senator Exon.

Senator EXON. Mr. Chairman, let me thank Senator Eagleton for coming here and giving us his view of this. As he knows I'm a cosponsor of S. 1218. The immediate concern that many of us have with regard to this big corporate unfriendly buyout is the possible detriment to the people that work for these enterprises. I just want to point out that I hope that S. 1218 does pass, regardless of the news in the papers this morning indicating that there may be some magic deal between TWA and some other new prospective owner.

It seems to me that we in the Congress and the regulatory agencies oftentimes are letting our desire for the free enterprise system get in the way of proper air service. I think that extends, Mr. Chairman, into the whole broadcasting industry, which is something else that we are going to be coming to grips with this afternoon and otherwise in this committee.

It just seems to me that while we are all strongly in support of the free enterprise system, we must realize and recognize such things as airlines slots going into the busy airports of our great cities, the international air routes which are saleable property for those who own them. I think S. 1218 is a measure whose time has come, regardless of whether or not some arrangement is made to keep Mr. Icahn out of buying TWA.

And so I thank the Chairman and my friend, Senator Eagleton from Missouri, for coming forth with this proposal. I think it is going to do a lot of good in the long term and I salute you both for providing the leadership in this area.

Senator EAGLETON. Mr. Chairman, I would ask unanimous consent that a copy of S. 1267 previously referred to in my testimony, be printed in the record at this point.

The CHAIRMAN. And the same with an article from yesterday's New York Times with respect to the United Airlines pension plan. Without objection.

[The article referred to follows:]

[New York Times, June 11, 1985]

UAL PLANS PENSION ASSET MOVE

Special to the New York Times

CHICAGO, June 10.—UAL Inc., adding to its protections against an unwanted takeover, today announced a plan to recapture about $962 million in "excess assets" of United Airlines employee pension plans.

UAL is the parent of United, which has been struck for more than three weeks by its 5,000 pilots. UAL said that it expected to redeploy the excess assets into a trust for funding corporate expansion. The trust would commit the funds to that purpose and would prevent a corporate raider from using the funds to pay off debt.

The trust would not be used for operating expenses or to pay strike related costs, a company spokesman said. A spokesman for the striking United branch of the Air line Pilots Association said the group was "studying" UAL's pension plan move.

FOLLOW GUIDELINES

UAL said it would follow Federal guidelines, which allow a company to recapture excess assets after the accrued benefits of the pension plan are transferred to annuities for employees. Rob Doughty, a UAL spokesman, said that the excess pension

assets had resulted from the company's conservative method of funding its pension plan, "excellent results" on its pension investments, high interest rates and reduced inflation.

Industry analysts said that the asset restructuring was yet another step in UAL's efforts to realize hidden value in the company to discourage any unfriendly takeover. At the end of 1984, United Airlines pension plan assets totaled $2.6 billion.

"Underutilized assets like those in our pension plans might attract those who would see the excess as a source to pay off their own takeover of UAL," said John L. Cowan, the company's executive vice president for finance.

John V. Pincavage, an airline industry analyst with Paine Webber Inc., said of UAL's tactic: "This is a good move. It allows shareholders to get the benefits of assets now instead of waiting years to get them realized."

PARTNERSHIP TRUSTS

Today's plan follows UAL's announcement in late May that it was forming a series of partnership trusts to which it will sell hotels owned by the Westin Hotel Company, a UAL unit. At the time, UAL said the proceeds would be used for "long-term strategic objectives." The trusts will be developed by UAL and Merrill Lynch Captial Markets. Each is to contain at least two hotels and to return between $300 million and $500 million in cash to UAL. That announcement, coupled with a favorable report by a Wall Street analyst, was followed by a jump in UAL's stock price. UAL closed at $58,125, up 87.5 cents, Monday in New York Stock Exchange trading.

A UAL spokesman said that the company might use proceeds from the recovered pension assets and the hotel partnerships for corporate expansion similar to its recently announced plans to buy the Pacific division of Pan American World Airways for $750 million and to purchase 25 Boeing 737's from Frontier Airlines for as much as $265 million.

The CHAIRMAN. Thank you, Senator Eagleton.

The next witness is Matt Scocozza, the Assistant Secretary of Transportation.

STATEMENT OF MATTHEW SCOCOZZA, ASSISTANT SECRETARY, OFFICE OF THE ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. SCOCOZZA. Good morning, Mr. Chairman.

Mr. Chairman, members of the subcommittee, the Department is pleased to take the opportunity to comment on S. 1218, the International Air Transportation Protection Act of 1985. The proposed legislation would require DOT to revoke an international air transportation certificate if, after a hostile takeover, an airline attempted to sell or did sell or transfer that certificate as part of a liquidation effort or other than in the ordinary course of business.

We have been informed that the full Commerce Committee has scheduled a markup of S. 1218 for tomorrow morning. For reasons that I will discuss, Mr. Chairman, we believe the legislation in this area to be unnecessary. The Department has considered carefully its authority to protect the public interest in transfers of international route rights.

On May 31, Chairman Danforth and Senator Eagleton wrote to the Secretary expressing their concern over the potential adverse impact of a hostile takeover of an air carrier that holds a certificate to engage in international air transportation. Their letter requested an assurance that the Department will review any proposed transfer of TWA's international route authority to ensure its consistency with the public interest as required by section 401(h) of the Federal Aviation Act.

The Secretary responded by letter dated June 5, 1985, stating that the Department's authority to review certificate transfers or

sales of aircraft allows us to protect the public interest in limited entry international routes. The Secretary also pointed out that in many cases the Department can take action to replace a carrier serving a limited entry route if its service does not reflect the carrier proposal upon which the route award was based.

The Secretary concluded by expressing the Department's belief that it has adequate authority to protect the interests of the traveling public. In exercising this responsibility, the Department will examine route transfers on a case by case basis to determine whether each transfer is in the public interest.

A route transfer agreement must meet the public interest standard of section 401(h) and, if a substantial portion of an air carrier's properties are also involved, section 408. Section 401(h) provides that no certificate can be transferred unless the Department finds that the transfer is consistent with the public interest. In addition, section 408 requires prior approval of an air carrier's purchase, lease, or operating arrangement involving a substantial portion of another carrier's properties and establishes a competitive and public interest standard for approval of such transactions.

The Department believes that the statutory authority cited above has proven and will continue to prove adequate to protect the public interest in the event of a proposed transfer of an international route certificate without undue intrusion into the operation of the marketplace and the industry.

Accordingly, we believe that S. 1218 is unnecessary in light of the Department's existing authority. Further, we take particular exception to the finding that "hostile takeovers of air carriers may jeopardize the provision of such transportation in a dependable and safe manner." There may be hostile takeovers, particularly in the case of one air carrier's hostile acquisition of another air carrier, where the result of the takeover increases management's efficiency and financial stability and provides direct benefits to the consumers. We believe that it is unwise to legislate a finding of this nature, which necessarily depends upon the facts and circumstances of the particular case.

Before concluding, I would like to state for the record the Department's position on two related matters: H.R. 2575, a bill that would dictate proceedings associated with the continuing fitness of Trans-World Airlines; and a petition by TWA for an investigation into the fitness of TWA should Carl Icahn acquire control of the company.

As I testified last week before the Aviation Subcommittee of the House Committee on Public Works and Transportation, the Department believes H.R. 2575 also to be unnecessary. We believe that the mandatory fitness proceedings that H.R. 2575 would impose are an unnecessary expansion of authority that is inconsistent with the principles of deregulation established by Congress in the 1978 Airline Deregulation Act. The Department believes that we already have adequate authority to take any necessary action to ensure the continuing fitness of U.S. air carriers.

As far as TWA's petition for a fitness investigation, the Department announced its decision earlier this week on June 10, after careful consideration of comments filed by interested parties, both

in support of and against the application. The Department issued an order denying TWA's application.

The Department does not have the authority to require that transactions involving the acquisition of control of air carriers by persons with no other transportation interests be submitted to the Department for approval. However, the principal issue in this proceeding was not whether Mr. Icahn should be allowed to gain control of TWA in and of itself, but whether the Department may review the fitness of a potential new owner of an air carrier in advance of the person's actual control of the carrier.

The decision concludes that, while the Department has authority under the FAA Act of 1958, as amended, to review that question, that authority should be used only in rare and exceptional circumstances. The Department does not intend, through our authority to review the continuing fitness of carriers, to be drawn into takeover attempts or other management disputes as a matter of course, or to otherwise substitute unnecessary government regulation for the competitive pressures of the marketplace.

The Department's routine involvement in takeover contests would be contrary to Congress' decision in the Airline Deregulation Act that prior government approval was unnecessary whenever a new person acquired control of an air carrier. We do not believe that our fitness review authority should be exercised before control has been acquired unless the likelihood of a change in control is strong and there is a compelling prima facie case of lack of fitness.

The decision finds that the institution of such an investigation is not warranted in this case because TWA has not made out a compelling prima facie case of lack of fitness with respect to Mr. Icahn. In reaching this conclusion, the decision evaluates the information submitted regarding Carl Icahn's fitness under the standard three-part test for holding an operating certificate.

This test focuses on managerial experience, financial and operational capability, and disposition to comply with the law. The decision finds no credible evidence that Mr. Icahn's control of TWA would deprive it of the managerial experience necessary to meet the fitness standard or result in an unfit operation, and finds no compelling case to warrant an investigation based on TWA's other allegations.

I would like to submit the decision for the record, Mr. Chairman.[1]

That concludes my statement. I would be delighted to respond to any questions that you or the committee would have.

The CHAIRMAN. Thank you, Matt.

It is my understanding that the position of the Department of Transportation on S. 1218 is that you do not support it, but you do not oppose it either. Is that correct?

Mr. SCOCOZZA. That is close, Mr. Chairman. Our position is that we understand the motivation and the concern for the public interest in international limited designations, but we feel we have the authority to protect the public interest, and so it is very difficult——

[1] See p. 8.

The CHAIRMAN. You believe that you have the authority to conduct a fitness investigation too. You are just not going to do it?

Mr. SCOCOZZA. Right.

That is a good point, Mr. Chairman. On that fitness case, I would like to just make a very quick comment with respect to comments by the good Senator, the senior Senator from Missouri.

I was the one who signed the order dismissing the application, and that was the conclusion of a very serious exercise at the Department of Transportation. The Department of Transportation feels, I believe rightly, that we are not going to submit a person or an entity to a costly proceeding which has a tremendous amount of serious impact on the operation of a company and a person or an entity's financial holdings without substantive facts brought forward underneath allegations made by a petitioner in a case.

We have simple Administrative Procedure Act procedures we must follow. As an attorney and an officer of the court when I get outside the Government, I must state that the simple principles of American jurisprudence dictate that we do not subject anybody to a quasi-judicial or a judicial proceeding without having facts on the record.

That essentially was the reason or the grounds for dismissal.

The CHAIRMAN. Does the administration oppose S. 1218? It is my understanding that you do not, that you think that you already have the necessary authority, which you may or may not exercise.

Mr. SCOCOZZA. Mr. Chairman, I wish I still worked on the committee and could give you a very short answer to that question. But I must tell you that the official position is that DOT finds it unnecessary. But to clarify that, for all practical purposes we believe we have the authority to do what the substance of your bill authorizes. So it would be difficult for me to say that we oppose the substance of the bill, because we already have the authority to do it.

The qualification I would make, though, is that if the facts that I believe are moving this committee were established in a proceeding before the Department of Transportation, we would both be coming to the same conclusions at the same time.

And the fundamental difference in the effect of your bill is that our discretion to review the facts or to review the complete situation is taken away from us, and it is that aspect of the legislation that I would have to say we would oppose.

I am sorry that is a long answer.

The CHAIRMAN. Well, you heard Senator Eagleton testify that many believe that the Department is not going to intervene at all in the dismemberment of TWA. Is it the Department of Transportation's position that a raider can acquire an airline and sell off the parts becuase such an transaction is an example of free enterprise at work?

Mr. SCOCOZZA. I would say, Senator, that that is probably an overly general view of the way the Department of Transportation or any Department of Transportation in any administration operates under the statute.

The CHAIRMAN. Well, Matt, I am not interested in a long general description of the law. What I am interested in doing is preventing the dismemberment of TWA.

We do not want an Administration that says that it has the authority to prevent the dismemberment of TWA, but at the same time may exercise this authority on a discretionary basis. If that is your testimony, then we want to change the law to make sure you do not have the discretion to allow the dismemberment of TWA.

Mr. SCOCOZZA. We have the authority, Mr. Chairman, to stop any activity within the corporate confines of an airline that is going to have an adverse impact on the public sector, once a fitness application is brought before the Department of Transportation by the carrier, as TWA did, or by an interested party or by the Department sua sponte, on our own initiative, if facts are put on the table, facts that will stand up in court.

There is a court, Mr. Chairman, in the instant case which basically said that there were inferences, but that there was no substantive information. The court basically said, at this time the court is not convinced by "highly attenuated circumstantial inferences"—that is the way the court-categorized the kind of information that was put on the table.

We got the same quality of information before us, and so my very short answer is, we can do something, we will do something once information, substantive evidentiary information is put before us to demonstrate that there is harm to the public interest.

The CHAIRMAN. Would the Department of Transportation prevent the dismemberment of TWA without any further legislation?

Mr. SCOCOZZA. That's a very general prospect, Mr. Chairman.

The CHAIRMAN. If the answer is that you would prevent the dismemberment, please tell us.

Mr. SCOCOZZA. We can prevent the dismemberment of a carrier if it is going to have an adverse——

The CHAIRMAN. I do not care whether you can or you cannot. I am asking you, would you prevent the dismemberment of TWA?

Mr. SCOCOZZA. Mr. Chairman, I must respond by qualifying to say that, if the facts presented themselves and required that kind of a remedy, yes, of course the Department of Transportation would do that. That is our statutory responsibility. I refrain from commenting——

The CHAIRMAN. Would you prevent Carl Icahn from selling off the international routes of TWA?

Mr. SCOCOZZA. In that kind of perspective, Mr. Chairman, I must give you another caveat. I sit in a quasi-judicial capacity and Mr. Icahn or TWA have the right for reconsideration of an application. But in terms of any carrier who wants to do anything with their international routes, they cannot sell those routes without our approval.

Now, I would make——

The CHAIRMAN. Our impression, Matt, is that what us does; namely, the Department of Transportation, is reach for your Adam Smith neckties, put them on, and do nothing.

Mr. SCOCOZZA. That is just not the case, Mr. Chairman.

The CHAIRMAN. Well, it has been so far with respect to TWA.

Mr. SCOCOZZA. No international route certificates have been proposed for sale. As a matter of fact, there is sworn testimony by the gentleman proposing to purchase TWA saying, "I intend to operate the company." Now, there are inferences, there are innuendoes

that a route sale be proposed. But once an international route sale comes to us, a sale that is in the ordinary course of business, we will handle it in the ordinary course of business.

But if there is evidence on the record to suggest that a transfer is the beginning of the end, then I think the Department of Transportation would have to have a major investigation.

The CHAIRMAN. I am sure it would conduct an investigation.

Mr. SCOCOZZA. In the past, the Civil Aeronautics Board decided not to allow a proposed transfer. We have also taken certificates away from carriers. We recently took away Houston-London from Pan-Am at the Department of Transportation and awarded the certificate to Continental because we felt that the international obligation would be better served by that carrier.

I would also make a comment, Mr. Chairman, that when we talk about international certificates we must look at value, and what kind of incentive is there to buy a carrier for those international certificates? Out of 18 international markets that TWA is in, 15 of those markets anybody can go into.

I mean, Paris, France, that looks like a very attractive, a very lucrative route. It is. But you can have it for the asking if you are a competent carrier that is fit, that is prepared to provide service in the international marketplace. Delta and American started just this week. They are not going to pay $5 million for it.

Brussels, Belgium, Italy, with some limited exceptions; Frankfort, one of the most lucrative markets in Europe, you can have it for the asking.

So when we are talking about routes having value and if we are looking at just Europe and the Middle East, where TWA operates, we are talking about Egypt, Greece, and Italy to a limited extent, and the U.K.

The U.K. is the guts of a TWA operation, and if somebody proposes to sell that that puts the whole operation into a material question. What exactly is the intent of the carrier after they get rid of the U.K. route? It is those kinds of material facts that it is hard for me to deal with on a hypothetical basis. And there are probably people behind me taking notes, because they will be filing incredible amounts of petitions tomorrow on both sides of the issue.

But that is generally the issue, Mr. Chairman. In what areas would routes have value for sales? Because they have limited designation opportunities in South America, it would be attractive to buy Eastern. I would not get in the business and I do not know who would be in the business of paying for South America right now. Perhaps U.S. Air, because of the limited aspect of their opportunity in Canada.

The Pacific is a different situation, but you can get into Hong Kong tonight, a very lucrative market. We can get you into Kuala Lumpur, we can get you into Singapore. We can probably get you into Australia without too much trouble.

And I have such confidence in our U.S. negotiators that if I were working for an airline I would not be paying for anything that I knew I could get for free. And if I knew I could put some pressure on the Department of State to move and negotiate something, I would probably get it for free.

So that is a material aspect of this exercise that I think the committee should consider. I do not believe there is that much of an incentive to buy an airline just to get the international routes. And if I were an interested observer, I do not think I would be looking at any carrier for some very limited markets. Instead, I would want to buy the carrier for itself and other things that it had, other than simply the international routes.

The CHAIRMAN. Senator Inouye.

Senator INOUYE. Thank you very much.

Mr. Secretary, I am looking at your statement, where you say that your fitness review should be exercised unless the likelihood of a change in control is strong. Do you believe that there was a likelihood of a change in control?

Mr. SCOCOZZA. Senator, in our proceeding we found that if there was a likelihood of a takeover or control and we have demonstrated this in the past with another situation—we believe we have the authority to act. I think there is the likelihood of control here by virtue of sworn statements in court that that was the intention of Mr. Icahn.

But there is a two-part test. The second element is whether there is a prima facie case, is there material evidence to suggest that the fitness of the carrier—that is our responsibility in a fitness proceeding, not the fitness of an individual, but the fitness of the carrier with that individual participating in it—is there material evidence to suggest that the carrier would be rendered unfit?

In the instant case in TWA, we found that the evidence was not present.

Senator INOUYE. Now, the determination of whether there is a prima facie case is determined by what agency?

Mr. SCOCOZZA. By the Department of Transportation, in a quasi-judicial capacity.

Senator INOUYE. Is that decision subject to review?

Mr. SCOCOZZA. Certainly, and as I mentioned earlier, Senator Inouye, certainly it is TWA's right to petition for reconsideration, which makes it very uncomfortable for me to comment in a very detailed fashion about the denial.

But our conclusion and the court's conclusion were very similar in terms of our review of the material evidence presented to us.

Senator INOUYE. Returning to the original question of the chairman, does this measure limit the authority of your Department in any way?

Mr. SCOCOZZA. We are talking about S. 1218?

Senator INOUYE. Yes.

Mr. SCOCOZZA. It does, Senator, and the only aspect of it is that when there is a hostile takeover we must revoke a certificate if it is being transferred as part of a liquidation. I said we already have the authority to do that, but we would do it on the basis of the material evidence put forward, and we would feel that that was the best conclusion and consistent with the public interest.

If S. 1218 amended present law, there would be no review of the facts. If S. 1218's conditions were met, then we would have to take the certificates back. We would have no discretion to review the facts, to look at the material evidence.

Senator INOUYE. I gather from your testimony that you feel that the bill is unnecessary, but you really do not oppose it?

Mr. SCOCOZZA. Well, as I said to the chairman, it is hard for me to say something negative about authority I have already. The troubling aspect of this is that the discretion is being removed from us to look at the facts in a particular case.

And it is hard for me to come up with a hypothetical situation, but there may be an innocent party that this could hurt down the line and we would be helpless in terms of that particular situation. And it is that aspect of this which we would oppose.

Senator INOUYE. Thank you very much.

The CHAIRMAN. Senator Exon.

Senator EXON. Thank you, Mr. Chairman.

Mr. Secretary, welcome back again. It is always good to have you. You have been tremendously helpful to myself and other members of the committee on a whole series of matters, however, I am not sure that in this particular case the majority of this committee is going to go along with you, as we usually do.

But let me pursue a little different line of questioning. First I would say that I think it would be well for you to just come out and say that the Secretary of Transportation at least opposes the bill that you are here testifying on this morning, rather than dancing around the bush on it.

It is pretty obvious to me from your testimony that you do not want this bill passed, and therefore then, since you are speaking for the Department, would it not be fair to say that the Department of Transportation opposes this bill, without going so far that you would maybe recommend the President veto it if it does become law? And I am not trying to put words in your mouth, but that is the conclusion I am drawing from the testimony that you have been giving.

Mr. SCOCOZZA. I would say that is a fair conclusion, Senator. The official position in the testimony is we find the bill unnecessary because we already have the authority.

Senator EXON. You find the bill unnecessary, but basically you oppose it, right?

Now, the reason that some of us are concerned about this is that, while we recognize that the regulators have to have some leeway to make decisions—and I think you have tried to make a pretty good case for that; in some cases I would agree with you. But you know, in all areas we do not completely trust the Department of Transportation, those of us on the Hill, nor do we trust totally the other branches of the regulatory agencies.

A recent example that you are very familiar with and upon which you were very helpful to us in Nebraska and other have-not States as far as rural airline transportation is concerned, a commitment was made by the Congress when they passed the Deregulation Act that we would have essential air service subsidies up through and including fiscal 1988. But it was this department, the Department you work for, and this administration that attempted to cancel out that commitment that was made by the Congress.

So there is some history, I say, for us not always agreeing with what you do or do not do as regulators.

But let me ask this question. I am going to try and take it out of Mr. Icahn and the TWA. I think we tend, we have a tendency maybe to say, well, S. 1218 is aimed at this particular situation. But when we pass a law, I think we had better take a very close look at it. That is not only for one case. We generally do not pass laws for one case, as you have expressed some concern, you know, what happened on down the road.

But back up a little bit to the present situation. In the opinion of your department, how well run is TWA under its present management, and do you feel that the management of that airline, if it is not sold off in pieces, might be better off and better serve the public under new ownership, either Mr. Icahn or someone else?

Mr. SCOCOZZA. I would say, Senator, that Mr. Icahn has said in a lot of his filings that he expects that his participation in the company will make it stronger and better. And it would be inappropriate for me to comment on Mr. Icahn's comments or the fitness or the managerial expertise of TWA.

I think TWA has ~~been a very~~ successful carrier in the last couple of years. I think that is probably a credit to management. Now, if they could be better, I do not know, or if the participation of Mr. Icahn would make them much better, I do not know. I am really not in a position to comment on that.

But we have not felt that it was appropriate to look at the fitness of TWA in the past. I can say that in my experience at the Department of Transportation in the last 2 years nothing has been raised to suggest that we, *sua sponte*, should check into the fitness of TWA. There is nothing that has occurred that leads us to believe that the public interest would be served by an investigation of TWA's fitness up until their own recent petition.

Senator EXON. Then it is fair to say that the attitude of the Department is that TWA as it presently exists is an efficient, well-run airline?

Mr. SCOCOZZA. I would say there is nothing that leads us to believe the contrary, that there is something going on that requires us to look into their managerial expertise.

I really don't have the ability to comment on the managerial expertise, because that will come back to haunt me in a later proceeding one way or another, I am sure.

Senator EXON. What about the other side of the coin? Evidently you also wish to reserve judgment on what Mr. Icahn might or might not do with TWA and its assets if he does gain control of the company.

Mr. SCOCOZZA. Right. Basically, the only evidence before us are statements by Mr. Icahn under oath in the U.S. District Court for the Southern District of New York and in his applications before the Department of Transportation that he is committed to running an airline, and there is no evidence, material evidence to the contrary other than allegations and time will be the test.

It is our responsibility to monitor airline activities and to see what happens and to step in if something occurs that would be contrary to the public interest.

Senator EXON. But, Mr Scocozza, going back to the statement Senator Eagleton made and the statement Senator Danforth made when he asked you a whole series of questions, I guess our concern

is that the Department of Transportation attitude seems to be that the free enterprise system is the best system and everything else be damned with regard to public service.

And at least I get the impression that you are basically saying we don't want to step into this, we don't think we should step into this, we don't believe that S. 1218 which would direct us to step into this under certain conditions is good legislation. Basically leave it to us and to our judgment.

Somewhere on down the road, is there a possibility that after the transfer of the company to Mr. Icahn or someone else, that the horse might be out of the barn, so to speak, and you would not be in a position to protect the public interest which is not only the employees but the traveling public who could be adversely affected if a major airline like TWA is dismantled?

How do you react to that, other than by saying we will cross that bridge when we come to it, which seems to me to be what you are saying?

Mr. SCOCOZZA. Senator, I can follow your line of reasoning up until the time you talk about dismantling, because there is no material evidence to indicate to us that that is what is going to happen.

As a matter of fact, there were sworn statements in court and before the Department of Transportation that the people intending to take over TWA are not intending to do that.

Senator EXON. When you say they are not intending to do that, do you mean to say that if the people—Mr. Icahn tried to take over TWA—would essentially keep running the airline as it is now with both its domestic and overseas routes? Has he sworn to that type of a plan?

Mr. SCOCOZZA. I believe that is the case. I cannot testify specifically on every aspect of his sworn affidavit in the district court, but I believe that is generally the case, that he has said that he intends to operate it and make it a better airline and operate the same existing system.

And with respect to the comment about the marketplace, Senator, yes, our attitude is that we want the marketplace to operate as free of Government regulation as possible. But in the 1978 act, this committee had in its own report a statement that in takeovers we are specifically going to allow people to take over airlines so long as they don't control any other carriers.

At one time—before 1978—we had to have an inquiry for anybody who was going to take control of an airline. If a person wanted to buy an airline, the Government had to enter into that exercise and review it.

In 1978, the Airline Deregulation Act said if a person or an entity not controlling any other carrier wants to buy an airline, that transition would be free of Government regulation. And in the committee's report, it basically said those kinds of things should be subject to the normal antitrust laws.

And I quote the committee report: "In nonregulated industries, this threat of a takeover helps ensure that managements have every incentive to profitably operate their firms."

So that is how I would qualify our position that the marketplace should govern, that we feel that the information that was put in

the committee report is very applicable, even today, unless there is material evidence otherwise that would require intervention.

Senator EXON. I am sure this is not a particular concern to the Department of Transportation. At least I don't think it should be, but I am advised and I am wondering if you have heard this also, that as far as Mr. Icahn is concerned, he has no objections to S. 1218.

Mr. SCOCOZZA. I would also say, Senator, that that might not be inconsistent with the statement that I made earlier; that 15 of the 18 international routes that TWA operates in Europe and the Middle East today, anybody can have—or probably. It seems that Mr. Icahn may not be entering into this whole thing because he may want to sell the U.K., Italy, and Greece routes.

So what the committee may be doing may not have a material impact on his ultimate objectives. But I also raised the point that I don't know if this kind of action will prevent a hostile takeover of Piedmont or of U.S. Air or of somebody who just operates in open designation markets like Hong Kong, Singapore, Thailand, Malaysia.

Senator EXON. Thank you, Matt, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Matt.

Mr. SCOCOZZA. Thank you, Mr. Chairman.

The CHAIRMAN. Next we have Councilman Robert Lewellen, councilman at large, Kansas City; and Leonard Griggs, airport director, St. Louis

Mr. Lewellen, thank you for being here. Please proceed.

STATEMENTS OF ROBERT LEWELLEN, COUNCILMAN AT LARGE, SIXTH DISTRICT, KANSAS CITY, MO; AND COL. LEONARD L. GRIGGS, AIRPORT DIRECTOR, ST. LOUIS, MO

Mr. LEWELLEN. Thank you, Senator Danforth. I am Bob Lewellen of Kansas City, MO, city councilman and the council's aviation subcommittee chairman. I appreciate the opportunity to be here.

Kansas City has been the home of Trans World Airlines systemwide facilities since Transcontinental and Western Air established its corporate headquarters there in 1931. Although its corporate offices were transferred to New York during the Howard Hughes era—and by the way, we would like them back—TWA's engine and airframe maintenance and overhaul facilities concentrate in Kansas City, along with its principal flight training computer and accounting functions.

Today TWA is one of the largest private employers in the Kansas City area, employing more than 7,000 highly skilled men and women in its Kansas City operations. It is one of Kansas City's most important corporate citizens and a major factor in its economic vitality.

Kansas City has worked cooperatively with TWA in the development of TWA's extensive modern maintenance and flight training facilities on Kansas City International Airport by issuing $97.2 million worth of revenue bonds, of which $78.5 million remain outstanding. These bonds do not mature until December 1997—$51 million at that time—and May 2000, $27.5 million more.

TWA has entered into long-term agreements with the city to guarantee payment of the debt service obligation on these bonds. Since the commencement of its air service in Kansas City in July 1929, TWA has become one of Kansas City's largest air carriers.

Under its agreement for terminal building space and field and runway use, TWA is obliged to pay rental and landing fees to Kansas City until June 1998. Last year, the rentals and use fees paid by TWA which exceeded $8 million, represented 27 percent of the total income received by the city at Kansas City's International Airport.

Most of the $500 million economic benefits contributed by TWA to the Kansas City area's economy annually is attributable to the facilities providing service to the entire TWA system such as aircraft maintenance, flight training accounting, and computer services.

It is the concentration of the systemwide functions in Kansas City, however, which make us vulnerable to overall service reductions by TWA or the disposition of assets anywhere on its system.

One of TWA's most valuable and salable assets are its very profitable transatlantic routes. Deregulation has devalued domestic routes, but international routes which are the result of years of development by carriers as well as difficult international negotiations remain protected assets. Disposal of TWA's international route authority would raise vast sums of money, but would concurrently reduce the level of activity in the aircraft maintenance, flight training, accounting and computer functions, and have a drastic economic effect on Kansas City and its citizens.

The bill before you is designed to prevent the sale of an air carrier's international routes following a hostile takeover of the carrier if the Secretary of Transportation finds that the sell-off was the intent of the takeover.

TWA is currently being subjected to an attempt at hostile takeover by Carl Icahn and his associates. In schedules filed before the Securities & Exchange Commission, they claim that it is not their intent to dismember TWA and sell off its assets. However, it is reported that they have incurred or about to incur some $200 million worth of debt to finance the acquisition of the TWA stock. They have stated that it might be necessary to sell off some of TWA's assets to pay off the acquisition debt if the carrier's cash flow is insufficient.

Enactment of the proposed amendment of the Federal Aviation Act of 1958 would have no effect on sales of international routes conducted in the ordinary course of a carrier's business or on Mr. Icahn's stated intention with regard to TWA, but would remove from him or any other party seeking control of a carrier with valuable international authority the temptation to reap huge profits at the expense of all others interested in a viable responsible airline dedicated to serving the public and not just a small group of speculators.

Thank you for affording me the opportunity to present Kansas City's concerns.

The CHAIRMAN. Thank you, Councilman.

Colonel Griggs.

Colonel GRIGGS. Mr. Chairman, as director of St. Louis Lambert International Airport, I appear today in strong support of the S. 1218. I am also submitting for the record a statement from my Mayor, Vincent C. Schoemehl, who could not appear because of a scheduling conflict.

The Nation's airlines are an essential public service and I believe there must be adequate levels at prices that are affordable to provide both domestic and international routes. I sincerely believe that Congress and the executive branches of Government have a duty to ensure the stability and the economic health of our civil air transportation system.

In 1938, the Congress regulated the Nation's airlines; in 1979, passed deregulation. Since then, we all know only too well the poor performances and bankruptcies of some carriers. I am not here today to call for a reregulation of this industry, but to recognize once and for all that this airline industry, I feel, is a quasi-public utility and they must be protected for the public interest.

I feel that rules and regulations applied to the airline industry must be different than those applied to other industries. International civil aviation has been and always will be regulated for reasons of national sovereignty and nonaviation objectives considered vital by foreign countries.

We cannot isolate international operations from domestic air transportation, since the whole U.S. air transportation system is entirely interdependent. Today in this unprotected, unregulated environment, we have an airline system whose assets—and this is not just TWA—whose people, whose aircraft, whose fixed terminals, whose maintenance facilities, whose ticketing and reservation centers—and you've heard from Kansas City the money that this cost—are reflected in some cases as undervalued listings in the Nation's financial centers, making them very appeaing for hostile takeovers.

Deregulation has allowed instant market entry and exit and has produced the concept of hub and spoke, of which St. Louis is a prime example. These hub systems cannot be instantly replaced by new carriers, if in fact they can at all. There is no magic ex carrier lurking out on the horizon that will replace TWA. This is an important fact that I must state.

We do not need an airline system with fewer carriers whose sole concern will be to maximize profits to investors or stockholders with no more public concern or obligation than that of a cement factory or an asphalt plant. Every community, region, and State must bring these matters and concerns for air service before you people at the Congress. This is the public forum of today where exactly these issues must be debated and resolved through your leadership and guidance.

Since 1979, the airlines have had many crises to face and overcome: one, the worst recession in 40 years, undeniably; two, oil prices that more than doubled in a 12-month period between 1979 and 1980; three, interest rates that destroyed all projections about carrying any cost of airline debt forward.

And now finally a new one; something called a hostile takeover.

TWA, with its long and proud tradition, is more than just an airline serving St. Louis and the many cities throughout its hub and

spoke system. It is more than just an undervalued stock listing on the exchange or ticker tape. TWA, gentlemen, is 11,000 employees and $500 million in the State of Missouri alone and its 28,000 people worldwide, offering the largest number of flights to and from the European continent, irrespective of whether these routes are free or assigned or bought.

Lambert Airport has been redeveloped and rebuilt with the infusion of over $80 million of airport improvement money, moneys that have been collected from 8 percent of every airline ticket sold and paid for by the traveling public. We heard an expression and testimony before Congress called shareholder democracy. I submit to you all that everybody who flies, anybody who buys a ticket is a shareholder in the domestic air structure and international air structure of the United States.

In 1984, Lambert Airport collected over $26 million in revenue from the air carriers for landing fees and terminal rentals generating over $24 million alone.

If TWA, who paid 53 percent of this total, were to cease to exist for any reason, the other airlines at Lambert would be required to make up the $8.5 million deficit created in landing fees alone. I doubt seriously if the management of Ozark would like to absorb an additional $8 million of debt.

Federal requirements for noise reduction and replacement of fuel-inefficient aircraft must be planned over the long term. New aircraft are indeed costly and acquisition must be planned and projected, not just purchased because you had a good year.

One Boeing 767 costs $43 million, and a Boeing 747 in 1985 costs $85 million, a far cry from the 707 which used to cost $2½ million. But their purchase is absolutely essential to compete in the international arena and a high-cost fuel market.

Domestic and international operations are mutually supportive and the hub and spoke system of today provides the passenger flow to feed the international traffic. The two must exist together and any attempt to dismantle these valuable international routes or domestic feed, I assure you will produce chaos.

Today the threat of a takeover exists for TWA in St. Louis that could result in a dramatic reduction in domestic and, more importantly, international service. This same threat could exist tomorrow for Dallas, TX, and American Airlines or Chicago, IL, and United Airlines. The Nation, its cities, and its airports have got to have stability for long-term planning. These hub and spokes and these airport developments do not occur overnight.

I am quite concerned about the management of proven carriers that would be devoid of experience in the airline industry either in the control of assets or in the complex arena of labor negotiations. I would like to state before you gentlemen today that TWA management and the charge that it needs to be replaced are absolutely false.

I would like to further state without any reservation that I consider TWA's leadership to be superior in all aspects. I am not only an airport director; I sit on the Board of Directors of AOCI which is an international operation of airport, and the Federation of Airport Authorities, and I feel it is precisely for this reason that TWA

stands ready today to make a profit both domestically and internationally for the first time in their history.

You must realize that TWA is a new spinoff and parent corporation. The management there is responsible solely only to that airline for airline management. I can tell you categorically, there is no finer management in the world of any airline today.

The Nation's airlines are the lifeblood of commerce, communication, and rapid movement of our people and high priority goods.

TWA is a national asset to be mobilized in times of crisis or war; it is an extension of and a visible presence of the American flag throughout the free world and, finally, it is 28,000 of our citizens. Any takeover could jeopardize both the domestic and international route structure of TWA.

And finally, I would like to say this: While takeovers are accomplished under the mantle of free enterprise, this general trend of corporate raiding upon business across this land and the demands for huge capital expenditures to acquire and defend, cost the United States and its taxpayers $75 billion in equity turned into debt last year alone. I question this as a proper exercise of the free market system.

I urge you to take immediate action in reporting S. 1218 to the Senate, as passage would guarantee stability of our most valuable asset.

And finally, Senator Danforth, I would like to say that I believe Adam Smith in his counsel to the British even said: "There are two things that should be protected: the British waterways and the British rail transportation."

That concludes my statement. Thank you, sir.

The CHAIRMAN. Thank you.

Now, Councilman, if TWA under new management were to decide to abandon the overhaul base, the result would be a disaster for Kansas City, isn't that right?

Mr. LEWELLEN. It would be the same effect as a steel mill closing or a BOP plant with their economic base, and it would be literally impossible to replace it. Yes, it would be a disaster for Kansas City.

The CHAIRMAN. It would be a disaster for the people employed by the overhaul base. Wouldn't it also be a disaster if TWA did not serve Kansas City in the very substantial way that it does now?

Mr. LEWELLEN. Well, quite frankly, the transportation aspect in terms of flights is not a great worry to Kansas City. Primarily we are concerned with the economic base of their support facility such as the overhaul base and the training facilities, the computer facilities. The actual transportation in terms of flights, while they are welcomed, are not the most important fear that we have.

The CHAIRMAN. Would you say that the question of ownership in and of itself is not the major concern? The question is not who owns the stock; the real question is what is done with the company?

Mr. LEWELLEN. Absolutely.

The CHAIRMAN. And if Mr. Carl Icahn owned the company and continued to operate it, as he has said on numerous occasions that he would, would that raise any particular concerns?

Mr. LEWELLEN. No, absolutely not. While we have a fine relationship and a high respect for the current management of TWA and

would want to see the general direction not only that is taking place now, but what we know of and hope for, expansion in the future is one that we would not like to tamper with. A competent management team that we would be sure of being able to continue in the same direction, then some of our fears would be out of the way. But I do feel that your bill, while it comes about as a result of this attempted hostile takeover, I think it goes far beyond the immediate situation and I think it is something that has been a void on the books that maybe has not come up, and I think it would be a good bill to have on the books.

And I am appearing here today as much as for setting up something in the future as we are for the immediate.

The CHAIRMAN. Let's suppose that TWA goes out and finds a white knight or a tattletale grey knight, to use Senator Eagleton's expression, a casino operator for example, to take control of TWA. Would it be your hope that in any negotiations to find such a white or grey knight, the management of TWA would try to secure some sort of agreements with respect to the future of the Kansas City facility?

Mr. LEWELLEN. Well, naturally, we, as I said, are quite happy with the current management team both in its current operations and what we know or hopefully feel will be its movements in the future.

And if they were satisfied that the white knight was going to go in that same direction that I assume, it would be with the intent of keeping that same management team and therefore it would please us.

The CHAIRMAN. But they should assure themselves of that? One of my concerns is that if there is any kind of change in ownership, there could be a change in the philosophy of operating the airline. Even if there is a friendly takeover brought about by the threat of a hostile takeover, the new owners could decide, to abandon Kansas City or St. Louis.

Mr. LEWELLEN. There is no doubt about that.

The CHAIRMAN. So my hope would be that TWA would be able to gain some sort of assurance from whomever it is courting that 10,000 employees, or 11,000 as Colonel Griggs says, would have some sort of protection.

Mr. LEWELLEN. Let's hope so.

The CHAIRMAN. Colonel, what percentage of the flights in and out of St. Louis are TWA flights?

Colonel GRIGGS. Lambert-St. Louis last year had 397,000 takeoffs and landings. TWA and Ozark alone constituted 65 percent of our traffic. We have grown in the past 7 years from 23d in the Nation to last year we were the 6th busiest commercial airport in the Nation. The predominant growth is due primarily to TWA.

The CHAIRMAN. TWA comprises approximately half the flights, is that correct?

Colonel GRIGGS. TWA is approximately 55 percent of the flights, but equally as important they are 53 percent of the revenue that comes to that airport insofar as landing fees and terminal rentals. They are under obligation to that airport to serve that airport and the public to the year 2005.

The CHAIRMAN. Now, if TWA were to pull up stakes and cease to exist, would other airlines come in and fill the breach?

Colonel GRIGGS. I do not feel there is any carrier to come in, and I think if you take a look at Dallas and what happened with the demise of Braniff, that airport sat vacant, a maintenance complex, no bond payments being made, Dallas having to absorb the cost. The terminal was not allowed to be used.

The problem with airline negotiations is, these things are very long-term, and TWA, for example, and the new owners, if they decided to pull out of St. Louis, would have absolute control over the TWA complex to be given out and handled as they deemed fit. And it would be a long court fight to do it.

Now, the landing fee equation of which TWA absorbs $8.5 million, that is shared in a joint pot by all the carriers, so if TWA were to vanish and no airline take its place, the other carriers by a mandatory agreement would have to pick up the $8.5 million deficit.

And I am certain that Ozark and Frontier and the rest have no desire to do this.

The CHAIRMAN. Senator Inouye?

Senator INOUYE. No questions, Mr. Chairman.

The CHAIRMAN. Senator Exon?

Senator EXON. Gentlemen, if you could, let me take the other side of this coin for a moment. Give me the scenario, if you could, as to why Mr. Icahn or anyone else would want to go through the expensive proposition of a purchase of all of those expensive facilities in Kansas City particularly and elsewhere in Missouri with the idea of closing them down?

Certainly if they closed down that facility they would have to move that facility somewhere else if they were going to continue any semblance of their present domestic air service. Is it your theory that they could do all of that and make this up somehow and make a substantial profit by the liquidation of the assets?

Since TWA, according to the testimony that we had this morning, is likely to make money for the first time on both its domestic and overseas flights, it would not seem, on the face of it, at least, that an entrepreneur would want to dismantle something that was making money just for the sake of dismantling it.

Or do you have some fears that this might simply be moved out of Missouri to somewhere else, and if so, where would such a facility possibly be obtained at the sacrifice in price that a new owner would have to take for such a transfer?

Colonel GRIGGS. When I make the statement that if TWA were to cease to exist that there would be no other carrier to come into Lamber, I think one must look at the testimony given by Mr. Icahn, and his comment was that he had no desire to dismantle TWA, and that all things wrong with American manufacturers and industry is poor management, and therefore he leverages that. The company is better off when he walks away, and the stock is undervalued because of poor management.

Now, let us take that apart a little bit. If you take a look at TWA, the assets are extraordinarily valuable. If you recall, Senator, about 2 years ago the FAA allowed the airlines to sell slots. The slots that they held going into a given airport were an extraor-

dinarily valuable market, and as you well know, there are eight airports that have very serious delays and are being analyzed today, and one of the arguments is, the slots will be allowed to be sold again.

Airport authorities in airports have no control over their destiny. We do not control the traffic. We do not control the times. We do not control the density of traffic. When TWA and American Airlines—it was a very conscious, deliberate decision to create the American hub in Chicago and the TWA hub in St. Louis. It did not occur overnight.

When I said that we would not have the use of those gates, Mr. Icahn or whoever would have the lease agreement to control those gates. He could sell off those gates. We, the airport authority, must approve the transfer of operating rights through those gates. We would realize no profit, but those gates have a highly marketable value to them.

The comment was made that the world has a glut on aircraft. This is true in certain categories of aircraft, but the Boeing 747 is a highly marketable airplane, particularly the later models, and they cost $85 million. The Boeing 767 has back orders for 3 years. That is a very valuable aircraft at $43 million.

The MD-80 produced by McDonnell-Douglas and all of these are absolutely necessary by Federally mandated noise laws to operate in a high cost fuel environment. These are extraordinarily valuable assets that could be sold almost overnight, and if you can buy that stock at $9 and you can generate whatever leverage you have, you could sell off. It does not take very many 747's. It does not take many 767's to amass $200 million very rapidly.

Senator EXON. So what you are saying, if I understand it, the assets that you have just stated that TWA has are of a sufficient value in the marketplace at least as of today that an innovative entrepreneur could come in and make money by totally dismantling the domestic airline.

Colonel GRIGGS. He could make money by dismantling only a portion of it.

Senator EXON. Thank you. Mr. Lewellen, did you have a comment?

Mr. LEWELLEN. I would just like to comment that the last thing that the colonel said concerning dismantling just a portion of it, of course, the longer that this thing goes on, the more hearings that take place, the more puzzling some times it becomes. As to what advantage there would be to selling it off in terms of all the side liabilities that would be left, it is different than a bankruptcy, as we stated.

Just in Kansas City alone, the tremendous amount of bonds that are left out, and with the leases all over the world, with the gates and the other facilities, the obligations that a person would have if they decided to completely liquidate the entire airline would be hard to figure.

However, the partial dismemberment of the airline could be viable. There have been even considerations in the past of the overhaul base being sold or being closed, the work being farmed out in other areas where the cost might be less. Hopefully those plans are in the past.

However, we are fearful that a partial dismemberment could cause a dismemberment in those facilities in Kansas City. On the other hand, the purpose of your bill, I think, as I say, goes beyond the Icahn situation at this time. That is why I feel that the bill is on its own merit without any hostile takeover something that should be passed immediately, and I would urge the Department of Transportation not to oppose it.

Senator EXON. Thank you, gentlemen.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Ford.

Senator FORD. Thank you, Mr. Chairman. I will pass right now. I want to ask some questions to later witnesses, if I may, please.

The CHAIRMAN. Colonel Griggs, putting aside for the moment the question of TWA, do you think that the general principle of this bill, that is, the reversion of international route certificates, is a good one?

Colonel GRIGGS. I think it is a very good one, and you do not have to wait upon some resolution. I think it makes a mandate upon the Department of Transportation to exercise their powers, and I am all in support of it. I think it is an excellent bill.

The CHAIRMAN. How would it help St. Louis, any other airline, or any other airport?

Colonel GRIGGS. It would help us, for example, because it would protect these international routes. You know, part of the whole buildup in St. Louis, the new international routes that St. Louis has, for example, they are extraordinarily valuable. They have become marketable not only to the airport, to the people that it serves, but to the selling of St. Louis as an entity, and so the very fact that we have now service to Frankfurt, to London, and to Paris, irrespective of whether Paris is free or not, is an extraordinarily valuable route. That makes Missouri a very attractive place for business, industry to relocate in. There are things that we want protected, and it will help protect them.

The CHAIRMAN. The purpose of the bill is not to indicate any disapproval of any particular individual or group of individuals owning stock in TWA

But, I have to say, Colonel Griggs, you have given me some pause, because you speak of the value of the airplanes themselves. Do you think this bill does the job that we hope that it will do?

The question is, what happens after ownership is acquired?

Colonel GRIGGS. I think the bill, sir, removes it from the parochialism of only being a Missouri bill, and I think it addresses any carrier that is involved in both domestic and overseas flights.

I would add, sir, I have not had a chance to study Senator Eagleton's bill, but there are aspects of it that I do like, and I feel that the domestic and international operations are so synergistic and so mutually supportive that they both must exist, and I think any diminution of a hub which serves an international market, there should be some scrutiny given to that also, but I do think that your bill would trigger this, that if you begin to draw down the international flights, it could follow logically that the domestic would also draw down.

The CHAIRMAN. Would the prospect of liquidation, now or at any time in the future, be less likely if international route certificates could not be sold in the wake of a takeover?

Colonel GRIGGS. I think it would be. You would not liquidate that company. The thing that makes TWA very attractive is its domestic feed that feeds into its international feed. Anybody who says that TWA could exist as a prime overseas carrier all by itself just does not understand the business.

New York people are not going to walk to New York to get on that airplane. There is a universal blanket of security that surrounds the normal traveler. You board TWA in San Diego, you are protected, and this is the feeling of the passenger. You want that TWA mantle of security that goes from San Diego to St. Louis to London or San Diego to New York to London, and to lose that, you have lost the value of that carrier.

It is an extraordinarily synergistic thing. And if you took it away, I think you destroy the carrier.

The CHAIRMAN. Let me ask you this. Let us suppose that Mr. X owns TWA, and he decides to sell it for as much cash as possible. If Mr. X were prohibited by law from selling off the idex and normal routes, would Mr. X nevertheless dismember TWA in order to sell it for a profit?

Is this bill a sufficient discount to prevent the dismemberment of TWA?

Colonel GRIGGS. Quite frankly, sir, I do not think it is that positive a turn. I think it is a step. It is a stumbling block to the takeover orders who would like to cause the demise of that airline, but quite frankly I think if you want the assurance of the protection of the American traveling public and that airline as a national asset, then you are going to have to try to protect the domestic route structure also.

The CHAIRMAN. But we do not have a handle on that.

Colonel GRIGGS. No, we do not now with deregulation, sir.

The CHAIRMAN. So the international routes are the only handle we have.

Colonel GRIGSS. I think it is a step in the right direction. I think that there are those carriers that are engaged in overseas travel, the stronger ones, the viable ones, and the domestic and the international feed. One is dependent entirely on the other, and I certainly subscribe to the passage of this bill.

Mr. LEWELLEN. I was going to add, Senator, that I think that some of the points that Senator Eagleton brought up today are very important, and his bill sounds like it would be more far reaching and probably something that would serve more protection, and I like it, but I think that what your bill is doing is more practical at this point to get the job done, because I think your bill can be passed and can go through.

And I think it will serve enough of a deterrent to accomplish what you want to accomplish, and later maybe the route can be refined or something else can be put in, but I do not think there is time. I think there will just be too much—to little time to get Senator Eagleton's bill or something more far reaching through.

Colonel GRIGGS. I subscribe to that. I think it sounds a very positive warning that the next step might follow.

The CHAIRMAN. Gentlemen, thank you very much.

The next witness is Mr. John Ash, senior vice president of TWA.

Senator INOUYE. Mr. Chairman, I am pleased to tell you that the United Airlines strike is over. And as of now we can all return to Hawaii.

The CHAIRMAN. Mr. Ash.

STATEMENT OF JON ASH, SENIOR VICE PRESIDENT, TRANS WORLD AIRLINES

Mr. ASH. Thank you, Mr. Chairman, Senator Inouye. Let me at the outset express my apologies for Ed Meyer. He called last night. He had an intention of being here. Unfortunately, circumstances beyond his control required that he be at the table all night and probably still this morning in some very indepth business negotiations, and consequently he asked me to convey his apologies.

The CHAIRMAN. With whom was he negotiating, Mr. Ash?

Mr. ASH. Senator, I do not feel at liberty to get into any discussions of what are very, very delicate negotiations.

The second thing, I would like to read Mr. Meyer's statement as if Mr. Meyer were reading it and do the best I can with it, and so please excuse me if you will to the extent that I refer to I and it is not in fact I.

Good morning. I am Ed Meyer, president and chief executive officer of Trans World Airlines. On behalf of the people of TWA, I thank you for this opportunity to appear before you in support of S. 1218, which is designed to preserve domestic and international airline service.

TWA is one of the largest airlines in the United States, with revenue approaching $4 billion; 28,000 employees provide service across the United States, Europe, the Mediterranean, and the Middle East. Our hubs are in St. Louis and New York, with a major maintenance facility in Kansas City. We serve 80 cities in the United States and abroad, and we are the largest passenger carrier across the North Atlantic.

As you know, most of our international service is provided under a regulatory climate imposed by foreign governments and defined within bilateral air agreements between the United States and our various trading partners. Thus there are significant foreign policy issues raised by virtue of any change in ownership or control.

I would like to address three issues at the outset. First, TWA is not opposed to mergers, takeovers, or even hostile takeovers per se. In this instance we are troubled because of a hostile takeover effort by an individual who has little history of running or building anything but cash.

This set of circumstances combined with potential deficiencies in the Federal Aviation Act is something that I am very concerned with. The international airline business can ill afford a quick buck artist that buys, breaks up, sells, and moves on, all within 6 months or less.

Second, I would like to urge swift passage of legislation now pending before you to limit such actions. And third, recognizing that major takeover battles are characterized by rhetoric, charges,

and countercharges, I would like to answer any questions you have so as to put our current situation in some reasonable perspective.

The key to understanding the airline business and the current first wave of takeover fever is to recognize that airplanes and airlines and route certificates do not provide service. People provide service or they do not. Merger mania has struck several industrial sectors of our economy after a certain well-known takeover artist recognized that the stock value of companies on what accountants call a going concern basis. Most stock prices are based on the assumption that a company will continue to be in business. The liquidation value of companies, of course, can be quite different from the going concern value.

Much of what you have read and heard about in the past few years results from a few individuals trying to cash in on that gap between what companies are worth as going concerns and what they are worth or may be worth busted up.

In the aviation business, as in oil or communications, most industry analysts recognize the familiar domino pattern of the raider's targets.

The May 27 issue of Business Week reported, and I quote: "Bust-up fever broke out in late April" in the airline industry. The article went on to say that "Carl Icahn's assault on TWA . . . serves notice that airlines are the new sandbox for the sharks to play in."

Now, those of us who have spent our lives trying to build airlines and domestic and international air service welcome the introduction of S. 1218, the International Air Transportation Protection Act, cosponsored by a majority of this committee.

International route certificates are not barrels of oil to be traded like commodities by speculators free from governmental supervision. These routes are the subject of bilateral treaty negotiations with permission to fly granted to carriers only after governments have established the ground rules.

Foreign governments recognize perhaps quicker than our own what I said before, that people provide service, and there is no assurance that U.S.-flag carriers will be able to maintain international routes in the wake of what Business Week so aptly called bust-up fever with sharks playing in the new sandbox of international aviation.

Given that our business is indeed special in its regulatory framework, given the foreign policy implications, given the wide recognition that international air service is the profitable segment of TWA, and the domino pattern of the raiders, the thought of trading away these route rights has crossed more than one mind on Wall Street.

S. 1218 would require DOT to block any sale of international routes following a hostile takeover if that takeover had been mounted for the purpose of disposing of those valuable route rights.

TWA supports the legislation as a commonsense measure to maintain international service in the interest of the traveling public. However we are concerned about the language requiring DOT to determine that the sale of routes was the intent of the takeover. We are fearful that the regulatory debate over which transactions which will be determined to be in the ordinary course of the carrier's business will become a loophole in the new law.

TWA therefore respectfully suggests tightening those provisions, and I am today proposing an amendment to close that loophole. Our concern about possible dismemberment of TWA and its implications on communities, employees, and stockholders was raised last month when we discovered that Carl Icahn and various entities that he controls had acquired a significant block of our common stock.

Convinced that he would move to seek control, TWA filed a petition with the DOT on May 16 asking that the regulatoy authorities determine whether Mr. Icahn would be deemed fit to run TWA.

Even in our deregulated era, if you want to be in the airline business, you must demonstrate to DOT that you are fit to be entrusted with the safety of the public. You have to have managerial competence, financial adequacy, and a history of regulatory compliance.

On Monday, June 10, the DOT rejected our petition for an oral evidentiary hearing with a claim that "TWA has failed to set forth a compelling prima facie case." However, they do acknowledge jurisdiction over fitness. Thus we are in a posture of catch-22. There is jurisdiction. We have not set forth a compelling prima facie case.

However, we do not get an oral evidentiary hearing. Subsequent to our initial petition, of course, Mr. Icahn wrote our board of directors and announced his intention to purchase the rest of the stock at $18 a share, and he indicated that he might have to begin efforts to remove our board and replace the members with his own people.

We are particularly concerned in light of Mr. Icahn's initial plan to strip TWA assets and cash needed for expansion and maintenance of equipment. We are mindful, of course, of Mr. Icahn's colorful history and his forays against other takeover targets, what he left in his wake and his record of disciplinary and enforcement actions by numerous regulatory authorities.

But our concern is not a knee-jerk reaction to the Icahn legacy at so many companies. The concern reflects a careful weighing of our responsibilities as a board and separately as managers to the shareholders for whom we work, our employees, the communities that we serve, our suppliers, and, of course, the traveling public.

The situation is unique. No one has ever tried to take control of a major U.S. airline in Mr. Icahn's fashion. No one has ever tried to come inside the back door and hijack an airline fitness certificate. Mr. Icahn has found a loophole and an area of fuzziness in the current regulatory environment through which he is trying to move toward control without triggering a fitness hearing.

To close various loopholes in aviation laws which were written before the corporate raiders began their clever tactics, Chairman Howard of the Public Works Committee and Chairman Minetta of its Aviation Subcommittee joined last week in introducing H.R. 2667.

That bill combines the approach of your legislation in S. 1218 with the requirement that DOT hold a fitness hearing and freeze Mr. Icahn's position until a fitness demonstration can be made.

Mr. Icahn in his typically facile manner has written numerous letters to the Congress assuring that he has changed his stripes, that he will not dismantle TWA, that he has the long-term interest of the public at heart. I hope so, but we at TWA are reminded of

Mr. Icahn's disclosure that he was buying our stock only for investment purposes. Then he said he had changed his mind.

Next he told us that he had a plan to liquidate TWA's domestic service and sell the airplanes.

Then he said he had changed his mind. Now he says he just wants to run an airline. Needless to say, no one should be surprised if he changes his mind again. Finally, let us not forget that he has been involved with 16 companies since 1979. He has spent an average of only 6 months with 14 of those companies.

For all of these reasons, TWA does not welcome Mr. Icahn's attempt to exercise control. In addition, our financial advisors and our board do not feel that his offer represents full value for the company. Accordingly, to get the best deal for our shareholders, we have asked Salomon Brothers to solicit other offers and to evaluate all alternatives during a 60-day period which began in late May. If appropriate proposals are not forthcoming, we have agreed to submit Mr. Icahn's offer to our shareholders.

While this drama unfolds, legislation to close loopholes in the aviation statues is imperative and reflective of the unique regulatory structure of the business itself. Analogies are made to takeovers pending in the communications business, another regulated sector familiar to your committee.

But they are key, important differences. If bust-up fever hits a broadcast company, and assets are sold to generate cash, the stations stay on the air in their regulated service area because that's where the value is.

But if bust-up fever continues to hit the airlines, with assets sold to generate cash to service increased debt on burdened balance sheets, there is absolutely no assurance that the airplanes will continue to service familiar cities. In fact, there is no assurance that the airplanes will stay in the passenger travel business, or even in this country, which has national security implications because of their civil reserve air fleet [CRAF] status.

At the outset of my testimony, I noted that takeover battles are characterized by all sorts of charges and countercharges. Before trying to clarify some of those, let me focus for a moment on our management team's employment contracts,

Mr. Icahin has mounted a P.R. campaign to create the spectre of TWA people, ready to pull the cord on their "Golden parachutes", raiding the corporate cash box on the way out the door. Well, raiding the corporate cash box certainly is a subject on which Mr. Icahn is a world-class master.

But to avoid the rhetoric, here are the facts. My own TWA employment contract arrangements have not changed at all since I became aware that Mr. Icahn was a shareholder. Our board of directors has put into place severance contracts for 29 key managment people during recent weeks. The vast majority of these arrangements call for a maximum of 1 year's salary as severance pay. That is little more than these executives are entitled to under normal business practice. For six senior vice prsidents, the arrangements call for 3 years' salary. Ten are for key personnel benefits people that must deal with problems of health and life insurance programs and related "people" problems. Our board feels that these amounts are consistent with termination pay scales for

others in and out of the airline industry. Giving valuable managers a year's pay when they are terminated through no fault of their own is customary and, if not conservative, not excessive.

The severance arrangements were put into place to keep key managers in their positions and focusing on their jobs at TWA during the takeover battle. Mr. Icahn has told the world how poor a job he thinks we do in running TWA, so many of our managers are concerned about their families and their future, aware of what would happen if TWA were to fall into the hands of a raider who puts the long-term interests of others behind the short-term interests of himself.

The executive recruiters also are fully aware of this situation, having watched Mr. Icahn and his imitators at other companies. As a result, many of our managers received calls in recent weeks from headhunters trying to lure them away from TWA.

I hope that this explanation will allow us to avoid such distractions and focus on the legislation and how we can work together to assure the continuation of air service, both international and domestic.

Again, I appreciate your support to date and I urge swift passage of S. 1218 to prohibit dismemberment of international route systems following hostile takeovers.

I look forward to answering your questions. On behalf of our 28,000 employees, the 80 communities in the United States and overseas and the 18 million people we serve each year, let me again thank you for this opportunity.

[The attachment referred to follows:]

Amendment to S. 1218. The following sentence should be added at the end of subsection (s)(2):

A sale or transfer, or attempted sale or transfer, of such certificate within three years of a hostile takeover shall be presumed to be part of the liquidation of such air carrier or other than in the ordinary course of such air carrier's business, unless the Secretary determines that the presumption has been rebutted by clear and convincing evidence after notice and a hearing.

The CHAIRMAN. Mr. Ash, thank you very much. I am not going to ask you about any particular negotiations going on now or any potential white knights. There has been some speculation in the press about Resorts International; but let me just express to you my concerns.

Selling TWA to a casino operator does not exactly inspire me with the greatest of confidence. I am not sure what sort of competence the casino operator has to operate an airline, nor am I confident that a casino operator would have in mind the best interests of the traveling public, the people at the overhaul base in Kansas City, or the people at the hub in St. Loius.

It would seem to me that if the casino operator is basically in the business of generating cash, he might take the position at some subsequent date that the best way to generate cash is to get rid of the pieces of TWA. This bill applies only to hostile takeovers, but the same problem could exist in the case of a takeover by a white knight.

Should this bill contain an assurance that no matter who ends up owning a majority of TWA stock, the overhaul base in Kansas

City will not be sold, and the hub in St. Louis will not be abandoned?

Mr. ASH. Senator, let me try to answer that in a more general sense, and then maybe a little more specifically. First, let me say that in lengthy discusssions obviously on an ongoing basis with Ed Meyer, and let me say my impression of the direction of our board of directors to our investment bankers, there was a very clear statement that the board had great concerns with Mr. Icahn's intentions with respect to operating the airline on an ongoing basis, and secondly, they had a concern with the price that Mr. Icahn was offering by that very same token, Senator.

Our board made it very clear that they thought and they believed and they wanted any options that were pursued to fully recognize the long-term interest, the long-term interest of not only the stockholders but the communities and employees.

So, while I cannot say that there are ever ironclad guarantees to anything, I think the board made it very clear in their directions to our outside counsel and our investment bankers that there are very broad considerations here, and those must be considered in any set of negotiations.

Now, there is a second, and let me be a little more specific, there is a second issue here, and that is the one which you have raised, and while I cannot get in per se to the question of fitness with respect to anyone that we are necessarily negotiating with, let me say that Resorts International, to the best of my knowledge, has twice, on two separate occasions gone through fitness investigations before the U.S. Civil Aeronautics Board.

Now, the difference here, and I would like to leave it at that, the difference here is that they, because they run a small airline and a helicopter service, went through the process twice, and were willing to do that. Mr. Icahn has made it very clear he does not want any fitness investigation, and consequently has gone through a back door.

The CHAIRMAN. Well, I would like to express my concern that we not go from the frying pan into the fire.

Mr. ASH. Well, our board has been very clear on that question, Senator.

The CHAIRMAN. Let me ask you about Mr. Scocozza's point. The thrust of his comments was that of TWA's 18 international routes, 15 of them are available to anybody. So it is not a particularly valuable asset to be selling off.

Is he correct on that?

Mr. ASH. I do not believe so, Senator. I mean, I think there are many, many agreements with Western European countries which we from time to time say arguably there is entry available.

But I would suggest to Mr. Scocozza, I would like him to submit for this Committee that price which he thinks the U.S. Government will have to pay if they try to replace TWA in the United Kingdom or from New York to the United Kingdom where any replacement carrier could not fly to Heathrow, which means they cannot compete with British Airways, or if the United States tries to put one or two more carriers in the New York-France market, what does he think he will pay for that?

Every time you go to the negotiating table with these foreign governments, Senator, you pay a price, and you do not get new entry from major points without going to the table.

Now, having said that, yes, you can start new services from places like Dallas and frequently, depending upon the climate, Dallas-Paris, the French would not object to it, or if you started from, say, Boston-Paris, the French might not object, but do not run it at any of their major, principal city pairs. And I say that with respect to any major Western European country. The answer is wrong.

The CHAIRMAN. So you think TWA's international certificates are a valuable asset?

Mr. ASH. Absolutely. I think one could make a similar argument in the case of United Airlines in the Pacific. The CAB told them, it seems to me, back in 1978 or 1979 that they were going to put them into Japan. Five years later or 6 years later, after some significant payments, United went into Japan, and in fact now is looking at a $750 million deal on a relatively modest Pacific division. Our Atlantic division is $2 billion, more than twice as big and twice as profitable.

The CHAIRMAN. Senator Inouye?

Senator INOUYE. Thank you very much. In looking over the testimony, I gather that Mr. Icahn usually does not end up running these companies the stock of which he has purchased.

Now, to the best of your knowledge, what happens to the physical assets of these companies, or what happened, and what happened to the ability to carry out the normal operations of the companies, and what about their employees, and what about the communities in which these facilities and plants were located?

Mr. ASH. Senator, I do not have indepth, thorough analysis on all the Icahn activities, but I can tell you two or three things. For example, in a very recent article in the LA Times it was reported in some depth that since 1979 Carl Icahn has been involved with 16 companies, 14 of those he was on average out of in 6 months, and in two or three of those we know very clearly that the balance sheets were heavily burdened.

As Colonel Griggs testified, $75 billion of equity has been replaced by debt. Now, the Business Round Table testified on a similar matter recently and said $90 billion of additional debt is now on the books of very major U.S. corporations, and the equity has been pulled out to pay these situations.

In a number of them they have had to sell assets, dispose of divisions, and recently I think we have all recently read Phillips has to dispose of something like $2 billion in assets.

Senator INOUYE. I do not suppose Mr. Icahn by himself is involved in the attempted purchase of TWA stocks. Who are his partners and associates of this investment in your stock?

Mr. ASH. Senator, that really goes to the issue, one of the major, principal, we think, long-term issues before us. We do not know the answer to any of those questions. If we knew, we might not be quite as concerned, but the fact is that we are caught by the Department of Transportation in a catch-22.

We cannot find out who his partners are other than National Westminster. We do not know who the banks are. We do know that Drexel Burnham was involved at one point and has pulled back and said this is a bad play and we want out of it. I paraphrase. I do not intend to quote Drexel Burnham, but we do not know, Senator, and that is why we felt so strongly that in oral evidentiary hearing before the DOT it would be essential to make that determination.

Now, the DOT, as you have heard Mr. Scocozza testify, said they are not going to submit anyone to a costly quasi-judicial proceeding, but we do not understand that, because if we want to start a new airline, and we have our $100 or $200 or $300 million, we must go to the DOT and prove fitness to get a license.

And the DOT will require that quasi-judicial proceeding, which frankly I do not know is all that costly. What Mr. Scocozza has said is, it is not required if you buy the airline out if you go in the back door and take out the certificate. So I cannot answer the question, Senator. Unfortunately, we just do not know and cannot find out.

Senator INOUYE. Does Mr. Icahn or any of his associates have any experience in running an airline?

Mr. ASH. Not to our knowledge, Senator.

Senator INOUYE. Now, does one need experience in running an airline to take over an airline?

Mr. ASH. I think one needs a vast amount of experience to run an airline. The principal managers of TWA have cumulatively—you know, we are looking at hundreds of years just in terms of maybe the 10 or 12 or 15 key people in the airline, and we are looking at a board of directors with vast experience.

It is a business that gets built from the bottom up, and it is a very tough business, and it does require some experience.

Senator INOUYE. So there are special management skills?

Mr. ASH. We think so, but at least we think that it is appropriate for anybody that decides to go into the business to be required to be deemed to be fit to enter the business, in other words, that they have a plan, that they have resources, and that they have a management team, which is what everybody else has to demonstrate if they want to go into the business.

Senator INOUYE. Is it your feeling that Mr. Icahn's latest letter is subject to change?

Mr. ASH. Senator, I really hardly can pretend to understand. You will recall that at the outset of all of these—certainly in our case. Let me speak to our case. At the very outset Mr. Icahn was in only for investment purposes. Well, as we said, he changed his mind. He was going to sell all the domestic division, and then he changed his mind.

Now, he wrote a letter to this committee. He wrote a letter to Senator Danforth, and I would like to introduce that letter in the record with some ancillary and supporting documents, if I might, because I think that letter is very telling. He wrote the letter on May 22. I believe it probably arrived here on the 22nd or 23rd. And Mr. Icahn filed a 13D on the 23rd of May, the same day or 1 day after the letter arrived here.

And that 13D filed by Mr. Icahn reads in part, if I might, after he describes that he may not currently have all the cash and resources needed, he goes on to say, "Registrants intend to repay any

debt incurred by them in connection with their acquisition of control through the earnings and cash flow of the issuer, and if such source is not sufficient, registrants, Mr. Icahn, would explore alternative financing sources, including the possible sale of assets of the issuer, the issuer being TWA."

Now, that is on the same day, Senator, that he wrote, or the day after he wrote to Senator Danforth, I think with copies to the full committee, and he stated, "I have absolutely no plans or intentions to liquidate TWA's business or its fleet of planes or to cause widespread layoffs or to curtail its routes or its St. Louis or Kansas City facilities. I have no, absolutely no plans or intentions."

Now, that was the same day. Now, within a week later Mr. Icahn is quoted in the New York Times, and he was also quoted in other journals similarly that he has now found a new consultant who gives him better answers than his consultants who said shut down the domestic division. The new consultant says you should lay off 2,000 people, which is 7 percent of the workforce.

Now, that is also within a week of the letter to Senator Danforth and to the committee, and so I would like to introduce that into the record, because I mean I think that is one of the types of things that has so severely troubled our board of directors.

Senator INOUYE. May that be made part of the record?

The CHAIRMAN. Of course.

[The material referred to follows:]

May 22, 1985.

Hon. JOHN C. DANFORTH, *Chairman*
Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing this letter to give you my personal assurances that my interest in TWA is totally consistent with yours and the interests of TWA's employees, the cities to which it flies and the travelling public. As you know, I have proposed an $18 per share transaction which would be made available to all of TWA's common shareholders.

Please rest assured—despite the publicity campaign that has been mounted against me—that I am fully committed to the long term interests of TWA. I personally believe that the airline industry will continue to grow and that a well managed TWA could turn around and become the leader in this deregulated environment. Thus, it is my intention to cause the airline to be operated on an ongoing basis by experienced and competent managers.

I have absolutely no plans or intentions to liquidate TWA's business or its fleet of planes or to cause widespread layoffs or to curtail its routes or its St. Louis or Kansas City facilities. You might find it ironic that protection is being sought from Congress and the Administration by TWA's current management, which in the last five years has shrunk the size of the airline and reduced its workforce by 12,000 people (about 30%).

Very truly yours,

CARL C. ICAHN.

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

UNDER THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. 3)

(Name of Issuer) TRANS WORLD AIRLINES, INC.
(Title of Class of Securities) COMMON STOCK
(CUSIP Number) 893349100

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications) STEPHEN E. JACOBS, ESQ., WEIL, GOTSHAL & MANGES, 767 FIFTH AVENUE, NEW YORK, NEW YORK 10153 (212) 310-8000

(Date of Event which requires filing of this Statement) MAY 21, 1985

If the Registrants' cash merger proposal is not accepted by the Issuer's Board of Directors, the Registrants intend to continue to explore strategies for seeking control. In this context, the Registrants intend to pursue the stockholder consent procedure referred to above and the Registrants (or any one of them) intend to acquire additional Shares (subject to availability of Shares at prices deemed favorable) from time to time in the open market, through a tender offer, in privately negotiated transactions or otherwise.

If the Registrants acquire control of the Issuer, they intend to make changes in the composition of the Issuer's Board of Directors and to conduct a detailed review of the Issuer, its assets, operations, properties, policies, and management. Based on such a review, Registrants intend to consider what, if any, strategies Registrants may deem desirable in light of the circumstances which then exist.

Registrants previously considered the possibility of eliminating some of the Issuer's domestic flights and selling certain planes; however, the Registrants have been advised by the Issuer's management, and believe, as previously reported in this Schedule 13D, that such a strategy would not be feasible. Registrants also considered a leveraged buy-out with management participation but have determined, following discussions with management, not to pursue such a transaction.

Registrants intend to operate the Issuer in such a manner as to maximize the long-term interests of the Issuer, its employees and the traveling public. Registrants intend to repay any debt incurred by them in connection with their acquisition of control through the earnings and cash flow of the Issuer. If such source is not sufficient, Registrants would explore alternative financing sources, including the possible sales of assets of the Issuer.

June 3, 1985.

Hon. (Representative),
House of Representatives, Washington, DC

Dear (Representative): During the past two weeks, TWA's management has spent considerable time, energy and resources trying to convince the Congress that my cash offer to purchase all of TWA's outstanding stock masks a hidden intent to dismantle the airline. I have provided written and sworn verbal assurances to the contrary; but, in pursuit of its attempt to entrench itself, TWA's management has appeared in every available public forum to prophesy disaster if I succeed in gaining control of the company. Now, TWA's Board has indicated that it will withhold my offer from TWA's shareholders for sixty days, notwithstanding a Federal Court's finding that TWA's objections to my offer lack merit. Of course, because of volatile changes which may occur in the economy or the stock markets or for other reasons there is no guarantee that I will keep open my offer for such an extended period of time.

Last Tuesday a Federal Court in New York after a thorough hearing and examination on precisely the issues which TWA has raised in the Congress and elsewhere concluded that the objections and predictions raised by TWA's management do not hold up under scrutiny. The Court specifically considered and rejected TWA's claim that I have not disclosed my true intentions in purchasing TWA stock and regarding actions I intend to take if I gain control of the company. The court concluded that TWA's case against me consisted entirely of "highly attenuated circumstantial inferences."

What motivated TWA's management to launch its broadscale attack against me is clear. TWA's management recognizes that the Congress specifically precluded government intervention in this kind of acquisition when it deregulated the airline industry in 1978. Congress left the ultimate decision of control not to the CAB or DOT, but to the shareholding public.

Now TWA's management has asked the Congress to reregulate the airline industry just enough to prevent prompt shareholder consideration of my proposal. TWA's management would have Congress freeze my proposal for 90 days while it tries to erect new barriers against my offer.

The Federal Court ruling in New York (enclosed) merits your attention because the Court is the first impartial entity to hear sworn testimony from both sides, to examine all the available evidence, and to rule on TWA's assertions. If found them totally unsupportable.

I hope you will consider the Court's findings very carefully—because I believe you will agree they address and reject the very arguments which TWA is asking the Congress to consider.

Consider the terms of my offer to TWA's shareholders, and I think you will find them straightforward and fair:

1. My offer is simple and direct: I have offered cash for every share of TWA common stock.

2. I have not offered junk bonds or other non-cash consideration.

3. I have offered a simple set of terms to all TWA shareholders (not a two-tier offer).

4. I have advised TWA's Board in writing that I will not accept any offer by the company to purchase my shares on terms not also made available to all other TWA shareholders, in the event that TWA's management may have contemplated a greenmail offer.

5. I also have advised TWA's Board that I will not vote my group's shares unless a majority of TWA's other shareholders also vote in favor of my offer.

And let me repeat the assurances that I have made in writing to Chairman Danforth, Chairman Howard and several members of Congress (and which I repeated in sworn testimony before the Court in New York). If TWA's shareholders vote to accept my offer, I am committed to the long-term interests of TWA, its employees, and the traveling public. I personally believe that the airline will continue to grow and that with proper leadership a well-managed TWA could become a leader in this deregulated environment. Therefore it is my intention to cause the airline to be operated on an ongoing basis by experienced, competent managers.

Compare that commitment to the response by TWA's management. Recognizing that good legal defenses for entrenched management do not exist in today's deregulated airline environment, TWA's managers have executed 29 "golden parachute" contracts to insulate themselves from the effects of my proposed acquisition; and TWA's Board has voted to withhold my offer from TWA's shareholders for 60 days.

I undertook this effort to acquire control of TWA, relying upon the airline deregulation law enacted by Congress in 1978. I ask you to reject the entreaties made by TWA's managers requesting that you protect them by overturning that 1978 law. TWA's shareholders should receive an opportunity to consider my offer; and the airline deregulation law should be allowed to work.

With best wishes,

Sincerely,

CARL C. ICAHN.

Senator INOUYE. Finally, it has been suggested by testimony here that your operations domestically and internationally are very profitable today. Do you believe under those circustances Mr. Icahn or any other new owner would try to eliminate either the domestic or the international portions of TWA?

Mr. ASH. Senator, I think that anyone that attempts to take over TWA, let us assume takes control of TWA, that wants to build and run a business in the long term best interest of stockholders, the employees, the communities, and the public will run the business and it will be a very profitable and beneficial business over the long run.

I think, however, if somebody is out to play shark, and it is not difficult to play shark today, you can play with half of the New York Stock Exchange companies, if you want to play shark, then you go into these things with four or five options, and that is the way the game is played.

One of the options is, you break it up and sell it. That is one clear option. One option is, you get out with green mail. Another option is, you find a white knight, and at last resort, some of the sharks from time to time have been known to take a company and keep it for a while. Now, that is rare, but it has happened on occasion.

And so, I frankly, in that latter case I really do not know.

Senator INOUYE. Was any green mail involved in these discussions?

Mr. ASH. Let me suggest, and I have to qualify this, but to the best of my recollection, and I believe I am correct that our board of directors made it very clear at the outset they would not pay green mail.

Senator INOUYE. Was any request made?

Mr. ASH. Senator, I cannot answer that question.

Senator INOUYE. Thank you very much.

The CHAIRMAN. Mr. Ash, I have received a letter, as you pointed out, from Mr. Icahn stating that he has no intention of dismembering TWA. Because of the tremendous effect that this would have on my State, he has stated that he has no intention of either selling off the overhaul base or elimination the hub at St. Louis.

He has made similar statements with respect to his intention not to dismember or liquidate TWA under oath in court. He has made those statements before a committee of the House of Representatives. And he has made those statements orally.

We are proceeding with this legislation because we do not believe that oral statements are sufficient. We believe that the law should provide some protection against the liquidation of an airline. As I pointed out in my earlier questions to you, I am not only concerned about one individual, I am concerned about whoever may end up owning TWA, white knight, gray knight, whatever.

I do not think that letters of intention are the basis for withholding legislative initiatives. But I think that in a world of some remaining truthfulness and honor, representations are worth something. I am wondering if any potential purchaser of TWA would give us or you some public assurance of intention with respect to the future of the airline.

For whatever little worth some people might find in it, at least we have clearly stated positions by Mr. Icahn that he does not intend to liquidate the airline. I do not know about Resorts International or anybody else. I do know we do not have any such statements, and I for one would breathe easier if I could receive some assurances for those employees of TWA that the airline will not be liquidated after any kind of takeover.

It is at least conceivable to me that an operator of casinos would not intend to operate an airline.

As an elected representative for all the citizens of Missouri, I would like to ask you if some assurance about the continuing inability of TWA could be forthcoming from the management, whoever that may be?

Mr. ASH. Senator, I do think that you and certainly the respective members of the committee and others in the Congress have a right to have a similar concern. I do think that is why your bill, and I would suggest your bill, with a minor amendment, would close a potential loophole, but your bill combined with a requirement that there be fitness as there is today not only when you start an airline but when you take one over, that closing those loopholes, two loopholes in the existing Federal Aviation Act I believe would go a very, very long way toward prohibiting or limiting the inclination of speculators to come into this industry and break up——

The CHAIRMAN. But my bill would do nothing about Resorts International. My bill would not prevent Resorts International from selling off any part of TWA.

Mr. ASH. I think there would be a lesser inclination of anyone whose intent was not clear. I think if yours and the fitness issues were addressed through modifications in the act, and the other question, Senator, where you become, of course, much more specific, and I understand that, I really can only say that our board has instructed our investment bankers to find something that is viable for the stockholders and viable long term for the communities and the employees and the public.

The CHAIRMAN. So you found a casino operator.

Mr. ASH. Senator, there are discussions with a number of people who are interested in, who have expressed an interest in owning and running an airline, or having, Senator, if I might, in some instances expressed an interest in having existing management of TWA run TWA.

The CHAIRMAN. Well, I do not know that we should be in the business of trying to determine what management comes or goes.

Mr. ASH. I agree.

The CHAIRMAN. I do not think we should be in the businses of passing legislation or judging the desirability of a deal by whether or not it maintains Mr. Meyer or anybody else as the CEO. Our concern is what is going to happen in the long term, whomever owns TWA. If the desire of the owner is to generate cash, that is not necessarily a good thing for the future of TWA. I think that the casino is a cash generator.

Mr. ASH. Well, again, Senator, in this instance that operator has twice gone before the CAB and passed fitness investigations.

The CHAIRMAN. To operate TWA?

Mr. ASH. To operate an airline.

The CHAIRMAN. To operate a major international airline?

Mr. ASH. Senator, the test for fitness is the same whether you have 3 airplanes or 10 airplanes.

The CHAIRMAN. Well, I think that fitness and the question of intent as to the future of the airline are two different things.

Thank you very much, Mr. Ash.

Mr. ASH. Thank you.

The CHAIRMAN. Next we have a panel, First Officer Mal Yarke, a TWA pilot representing the Airline Pilots Association, and Ms. Mary Ellen Miller, legislative director, Independent Federation of Flight Attendants.

STATEMENTS OF MARY ELLEN MILLER, LEGISLATIVE DIRECTOR, INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS; AND MAL YARKE, AIRLINE PILOTS ASSOCIATION

Ms. MILLER. I am Mary Ellen Miller, legislative director of the Independent Federation of Flight Attendants, IFFA, the labor organization designated as the exclusive bargaining representative of all of the approximately 7,000 flight attendants employed by TWA. The 7,000 union members employed by TWA are based within the continental United States.

I am appearing today on behalf of IFFA and its membership in order to urge passage of Senate bill 1218. Certainly our initial interest in this bill was prompted by the recent massive accumulation of stock by Carl Icahn and the continuing uncertainties that surrounded his attempted takeover.

However, as I will explain, our concerns and interest in this legislation are much broader than that. Because this legislation would pose a significant deterrent to those whose intent it is to sell off the most profitable assets of any airline's operation—in this case the international routes—instead of maintaining service, we urge its favorable consideration.

As might be expected, part of our concern is based upon the preservation of our jobs and our careers and the avoidance of the loss of those jobs and careers through hasty, ill-conceived or reckless acts taken by potential new ownership interested more in a quick profit than the public interest.

The membership that IFFA represents has an average length of employment with TWA exceeding 13 years. The men and women serving the airline as flight attendants all have vested their careers on an ongoing and permament basis toward the preservation of the airline, not only as an employer but as a provider of needed services in the United States and abroad.

We do not want to lose our jobs or the important roles that we serve in this important industry. An outsider such as Icahn might well look at TWA's international operations and its domestic operation as two separate entities, one highly profitable and one far less so. Such a distorted view of TWA's overall operation could well lead to a conclusion based solely on financial appearances that profit could be made by sale of the international operation. Such a decision would be catastrophic to the interests of those that we represent, the communities served in the TWA network and the public generally.

TWA's international and domestic operations complement each other in effectuating a single system. Flight attendants that we represent work both on international routes and domestic routes and are covered by a single collective bargaining agreement.

From a passenger service standpoint, domestic routes provide a necessary passenger feed into TWA's international departures. Passengers originating from diverse points throughout the United States are presented with a continuity of service to final destinations throughout the world. From a financial standpoint, the two operations are sustained by each other, and one without the other would suffer dramatically.

It is true that the international operation generates substantially higher profit than does TWA's domestic route structure, but it is the domestic structure that provides passenger flow in and out of the profitable transatlantic market.

Due to the seasonal nature of the overall system operations on TWA's route structure, employees not needed in slower domestic months maintain full employment levels by utilization on the international route structure, and conversely, flight attendants normally utilized on international routes are utilized on the domestic operation during slower international months.

For these reasons and because of the employee dependency on the continuation and preservation of both operations for purposes of benefits such as retirement, it is our hope that this body will give favorable consideration to passage. However, our concern and our support for this legislation is not premised solely upon TWA's immediate problems with Icahn or the preservation of our jobs. Indeed, they are much broader.

U.S. air carriers operating abroad provide services of vital importance to the United States Government and to the country's economy and to the public at large. As this committee knows, Congress has so recognized and has expressly stated that to be the case.

In our written presentation we have outlined some of the legislative provisions that we think this committee ought to look at again so as to keep this in its proper perspective. In addition, our Nation's reputation as the leading force in the aviation industry worldwide is bolstered by the continuation of the international operations of U.S. air carriers.

It is these additional concerns that have prompted our support for this legislation. The threatened dismantling of any air carrier's international operation, especially TWA's, this Nation's premier flag carrier across the Atlantic, would obviously have a drastic impact upon those employed, the communities served and the traveling public.

Moreover, as Congress has noted, the dismantling of an airline's international operation by the selling of its international routes could very well jeopardize national interests.

We previously indicated that Icahn's intentions concerning the operation of the airline are unclear. However, even if Mr. Icahn's intention is to continue TWA's operation, including the international operation, in substantially its present form, the balancing of the many interests at stake weigh heavily in favor of this legislation.

The proposed legislation would pose a significant deterrent to those whose intent is to sell off the most profitable assets of an airline's operation. Should Icahn gain and maintain control of the airline, and if his direction is the continuation of the airline, there is little possibility or likelihood of harm flowing from the passage of the legislation. On the other hand, if his intent is to the contrary, the harm to TWA's long-term employees and the communities and passengers served can cause irreparable harm.

If Mr. Icahn intends to dismantle TWA's international operation, the enactment of this legislation is an absolute necessity. The Airline Deregulation Act was not enacted for purposes of wholesale destruction of the long existing airline carriers in the name of quick profiteering.

We therefore would urge favorable consideration of this bill. The sale of the international route for purposes of personal greed and the resulting catastrophic consequences are a matter of grave concern to the membership that we represent.

Members of the committee—or Senator Danforth, you are all that is left now, this concludes my testimony. And I would be happy to answer any questions.

[The statement follows:]

STATEMENT OF MARY ELLEN MILLER

Madam Chairman and Members of the Committee, I am grateful for this opportunity to appear before you.

My name is Mary Ellen Miller. I am the Legislative Director of the Independent Federation of Flight Attendants (IFFA), the labor organization designated as the exclusive bargaining representative of all of the approximately 7,000 Flight Attendants employed by Trans World Airlines, Inc. (TWA). These 7,000 Union members employed by TWA are based within the continental United States.

I am appearing today on behalf of IFFA and its membership in order to urge passage of Senate Bill 1218. Certainly, our initial interest in this bill was prompted by the recent massive accumulation of Trans World Airlines stock by investor Carl Icahn and the uncertainties—the continuing uncertainties—that surround his attempted take-over of Trans World Airlines. However, as I will explain, our concerns and interest in this legislation are much broader than that. Mr. Icahn's intentions with respect to the continued operation of the airline, especially the International operation, are far from clear. Mr. Icahn's statements would seem to confirm our fears that he does not intend to maintain the International operation. Because this legislation would pose a significant deterrent to those whose intent it is to sell off the most profitable assets of any airline's operation—in this case, its International routes—instead of maintaining service, we urge its favorable consideration by this Committee.

As might be expected, part of our concern is premised upon the preservation of our jobs and our careers and the avoidance of the loss of those jobs and careers through hasty, ill-conceived or reckless acts taken by potential new ownership interested more in a quick profit than in the public interest. The membership that IFFA represents has an average length of employment with TWA exceeding 13 years. The men and women serving the airline as Flight Attendants all have invested their careers, on an ongoing and permanent basis, toward the preservation of the airline, not only as an employer, but as a provider of needed services in the United States and abroad. We do not want to lose our jobs or the important roles we serve in this important industry.

We at IFFA—not unlike industry and stock analysts—are not in a position to determine Mr. Icahn's present intentions, or what his intentions have been from the very beginning. We hope that Mr. Icahn intends to continue the operation of the airline and not to dismantle it for purposes of profiteering. But there are no guarantees and, indeed, the possibility remains open that Mr. Icahn, once being in position to exercise control over the airline, may sell off its assets or splinter its International from its Domestic operation. Mr. Icahn's early public statements indicated an intention to exercise these very options. Although his later public utterances have disclaimed this intention, we note that, in his recent filings with the Securities and Exchange Commission, Mr. Icahn continues to hold open the possibility that he would indeed sell off assets in order to repay debt that he incurs in the acqusition of the corporation.

An outsider such as Mr. Icahn might well look at TWA's International operation and its Domestic operation as two separate entities—one highly profitable and one far less so. Such a distorted view of TWA's overall operation could well lead to a conclusion—based solely upon financial appearances—that profit could be made by sale of the International operation. Such a decision would be catastrophic to the interests of those that we represent, the communities served in the TWA network and the public geneally.

TWA's International and Domestic operations complement each other in efectuating a single system. Flight Attendants that we represent work both on International routes and Domestic routes and are covered by a single collective bargaining agreement. From a passenger and service standpoint, the Domestic routes provide a necessary passenger feed into TWA's International departures. Passengers originating from diverse points throughout the United States are presented with a continuity of service to final destinations throughout the world. From a financial standpoint, the two operations are sustained by each other—and one, without the other, would suffer dramatically.

It is true that the International operation generates substantialiy higher profit than does TWA's Domestic route structure. But it is the Domestic structure that provides passenger flow in and out of the profitable transatlantic market. Due to the seasonal nature of the overall system operations on TWA's route structure, employees not needed in slower Domestic months maintain full employment levels by utilization on the International route structure; and conversely, Flight Attendants normally utilized on International routes are utilized on the Domestic operation

during slower International months. For these reasons, and because of the employee dependency on the continuation and preservation of both opeations for purposes of benefits, such as retirement, it is our hope that this body gives favorable consideration to passage of Senate Bill 1218.

However, our concerns and our support for this legislation is not premised solely upon TWA's immediate problems with Mr. Icahn or the preservation of our jobs—indeed, they are much broader. United States air carriers operating abroad provide services of vital importance to the United States government, to our country's economy and to the public at large. As this Committee knows, Congress has so recognized and has expressly so stated this to be the case. In 42 U.S.C. §1159b(a) Congress declared:

United States air carriers operating in foreign air transportation perform services of vital importance to the foreign commerce of the United States including its balance of payments, to the Postal Service, and to the National defense.

Again, in 42 U.S.C. §1302(a) of the Federal Aviation Act, Congress declare that the Civil Aeronautics Board shall consider as being in the public interest the following:

(5) The development and maintenance of a sound regulatory environment which is responsive to the needs of the public and in which decisions are reached promptly in order to facilitate adoption of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States, the Postal service, and the national defense.

(12) The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation.

In addition, or nation's reputation as the leading force in the aviation industry worldwide is bolstered by the international operation of United States air carriers.

It is these additional concerns that have prompted our support for this legislation. The threatened dismantling of any air carrier's international operation, especially TWA's—this nation's premiere flag carrier across the Atlantic—would obviously have a drastic impact upon those employed, the communities served and the traveling public. Moreover, as Congress has noted, the dismantling of an airline's international operation by the selling of its international routes, could very well jeopardize national interests.

We previously indicated that Mr. Icahn's intentions concerning the operation of the airline are unclear. However, even if Mr. Icahn's intention is to continue TWA's operation, including the international operation, in substantially its present form, the balancing of the many interests at stake weigh heavily in favor of this legislation. The proposed legislation would pose a significant deterrent to those whose intent it would be to sell off the most profitable assets of any airline's operation—in this case, the international routes—instead of maintaining services. Should Mr. Icahn gain and maintain control of the airline—and if his direction is the continuation of the airline—there is little possiblity or likelihood of harm flowing from the passage of this legislation. On the other hand, if his intent is to the contrary, the harm to TWA's long term employees, the communities and passengers served by TWA, the general public and our national interests could be catastrophically and irreparably harmed. Thus, on balance, the intent of this legislation and its operation would be a reasonable accommodation between the interests of those interested in the acquisition of an airline and the general public.

If Mr. Icahn intends to dismantle TWA's International operation, the enactment of this legislation is an absolute necessity for the protection not only of the employees that we represent or the traveling public but the public at large. The Airline Deregulation Act was not enacted for purposes of the wholesale destruction of long existing airline carriers in the name of quick profiteering. If this is Mr. Icahn's intent, and we do not say that it is, our protection, the protection of the traveling public, and the continued credibility of United States air carriers in the world marketplace can be provided only by Congress. We, therefore, would urge favorable consideration of this bill so that if those interested in acquiring air carriers with the intent to dispose of an airline's international operation attempt to do so, the Secretary of Transportation may revoke the carrier's certificate for the providing of international air transportation. The sale of international routes for purposes of personal greed and the resulting catastrophic consequences are a matter of grave consequence, and from what can determine, can only be prevented by Congress.

Madam Chairman, members of this Committee, this concludes my testimony. I appreciate the opportunity to have appeared before you today and would be happy to answer any questions that you may have. Thank you.

The CHAIRMAN. Thank you very much.

Mr. Yarke.

Mr. YARKE. Thank you, Senator Danforth.

I am making this statement on behalf of Capt. Harry Hoglander, our master chairman of the TWA Airline Pilots Association who is unable to be here this morning. I might add that as a fellow Missourian, it is a great pleasure for me to be here.

Good morning, Mr. Chairman and members of the subcommittee. I am Harry Hoglander, a captain for TWA and chairman of the Airline Pilots Association, Master Executive Council for the airline. On behalf of all the pilots of TWA, I would like to express my appreciation for being given an opportunity to comment on the proposed legislation.

The TWA pilots support S. 1218. This legislation would require the Secretary of Transportation to initiate a continuing review, when following a hostile takeover, an airline seeks to sell off its international routes. If the sale of these routes is part of the liquidation of a carrier or outside the usual course of business of the carrier, the Secretary would revoke the appropriate certificate for the provision of international air transportation.

This sort of fitness review is entirely in the public interest. International routes are valuable assets awarded only after a thorough review of a carrier's ability to provide safe and reliable service on these routes. The expectation is that the selected carrier will continue to serve those routes.

A hostile takeover may well mean that those expectations are not going to be realized. Frequently a purchaser finances such takeovers by incurring a significant amount of debt that must be quickly repaid. An obvious way to raise the cash to pay off this debt is the sale of international routes. The sale may well be to the highest, rather than the fittest, bidder.

Pilots are not necessarily opposed to the business transactions in the airline industry. Usually sound business judgment results in capital flowing to opportunities that will produce both growth and jobs. In the case of a hostile takeover, however, the motivating force is frequently not long term growth and development but short term profits derived from the sale of assets and the resultant reduction in work force.

It is the effect of hostile takeovers on airline employees that is of great concern to me, and in this regard I would like to make a couple of observations about the unique vulnerability of employees in the airline industry to employment losses, using TWA pilots as an example.

There are more than 3,500 pilots at TWA. The average longevity of our pilots is in excess of 20 years, and they have built their lives around the expectation that they will complete their careers with this company. This sort of long term relationship is typical because there is really very little pilot mobility in the industry for a couple of reasons.

First, an airline pilot normally becomes a member of a seniority list; subsequently, his or her wages, place of work, hours and job assignments are determined by his or her place on that list. A pilot who moves to another carrier goes to the bottom of the seniority list no matter how many years of service he may have given at another airline.

Second, for pilots age becomes a genuine barrier to mobility. Once a pilot reaches the age of 35 to 40, or as in my particular case, 50, there is no real chance of obtaining a job with another major carrier. The loss of employment strikes airline pilots with unusually harsh consequences.

Thus, TWA's pilots are concerned about the unmonitored sale of international routes following a hostile takeover. As a matter as important as the sale of international routes simply should not be left exclusively to the mercy of the marketplace. The legislation under consideration is a sensible way to ensure that hostile takeovers are not motivated by the potential for making a quick profit by selling such routes. This provision nicely supplements the Department of Transportation's current authority to ensure that carriers are willing and able to provide authorized air transportation.

It may well be that the Department will usually decide that the international routes in question should not revert. However, the public's interest in safe and reliable air transportation demands no less than the Department make the determination.

If I may, Senator, I would like to add a few of my own comments to the prepared testimony.

We, the 26,000 employees of TWA, share your concern about who owns TWA. We have no golden parachutes, only lead ones consisting of unemployment compensation. If a raider decides to follow through with potential options in order to finance his acquisition, we are the ones that pay and pay dearly.

I may observe that one of the specific concerns of the Deregulation Act of 1978 was to keep employee and worker disruption at a minimum; yet, in the 8 years since the act was passed, employee protection provisions are still not realized.

The Department of Transportation since assuming the 408 rights from the Civil Aeronautics Board in January has in each case refused to consider the impact that various mergers and acquisitions would have on employees, despite instructions from the Congress to do so.

In short, I am not comforted by the Department's claim that they have statutory authority without additional legislation to protect everyone's interest.

I thank you, and I will answer any questions you may have.

The CHAIRMAN. Let us suppose that the ownership of TWA has been transferred, and the new owner decides to sell off the airline, sometime in the future. If after initially deciding to operate the carrier the new owner wants to get out of the business 1 or 2 years down the road, he would then begin to liquidate TWA. He would sell off the international routes, the airplanes, the gates and everything else. The city of St Louis would then no longer be the TWA hub. Someone might came in and fill the breach, but the TWA employer would not necessarily be working for whoever flies the planes in and out of St. Louis, isn't that right?

Mr. YARKE. Senator, if I may, I believe that is an accurate statement.

The CHAIRMAN. If you did work for them, you would be at the bottom of the heap.

Mr. YARKE. That is a fact. Most—I cannot think of an airline in existence today that does not operate under the seniority system.

The CHAIRMAN. Seniority means with that particular airline and not in the industry.

Mr. YARKE. That is correct.

Ms. MILLER. That is true, and it is also correct that the LPPs, the Labor Protective Provisions of the Deregulation Act have not worked. They are not working, and they do not provide protection for the employees. So naturally, the reason for all of us being here, is to try to provide some sort of protection for the employees. And it is our belief that Congress is the only way we can go with this, although we have done one other thing. We, IFFA, are in negotiations right now with TWA, and we have tried to provide a sort of minigolden parachute for ourselves as employees. And I think it fits in, Senator Danforth, with the statement that you had made, reduce significantly the value of a carrier to a raider, but would not affect a buyer who intends to preserve service and operations.

We have made an offer that is a kind of shark repellant as it has come to be known, that we think would help provide some protection for TWA and us as the employees, and that would be to make a provision in our contract that there would be a requirement as part of any sale that the employees, our employees would go along with that sale with their current working agreement. And we think that would work to their best interests as well as ours as a protection, our own miniparachute.

The CHAIRMAN. Senator Ford.

Senator FORD. I think we are both thinking about the same thing. As I understood the testimony earlier, a consultant has said they would probably lay off about 2,000 employees if the takeover was consummated, and that would be a reduction of somewhere approximating 7 percent of the work force. We have had some other mergers and takeovers around my town and in my State which are not nearly as significant as this one. But I have seen how the opportunity to just resign and acquire the golden parachute of 2, 3, 5 year salary, depending upon the company, and they resign and then come back on as a consultant for a good many years under a lucrative contract. It seems like that the cream comes right off the top. Those that have been the stability of that airline or that operation for these many years that have looked forward to retirement suddenly find the cruel fact that they are out, and it is awful cold out there, and unemployment compensation lasts only so long.

Do you have any suggestions what Congress can do as it relates to employee protection? Somewhere maybe in the percentage of income or whatever of the officers of the company that are acquiring the golden parachutes as it relates to the employees?

Ms. MILLER. Well, I think that what we need to do is provide as many deterrents as possible for these kinds of takeovers and the sales. That is why I think that this sort of action is important of Senator Danforth's and Senator Eagleton, and yes, that is why we are here. The employees' concern is what is primary. They are un-

willing participants in this monopoly game. They end up on a path that they do not want to be on and have no control over, as a matter of fact. So we are looking to Congress to help us.

Senator FORD. Mr. Yarke, do you have a statement?

Mr. YARKE. I agree with that, Senator. I think one step in that direction would be for the enforcement of the mandate set forth by Congress in the Deregulation Act in its spirit and intent. And one other straightforward approach would be perhaps some sort of an instruction to the Department of Transportation in exercising its duties to consider the protection that would be afforded employees of long standing in any merger or acquisition.

I think that, as Mary Ellen points out, we are unwitting participants in this thing and have very little to say about which way it goes, but yet, we provide the lifeblood of the company and the experience for many, many years. And it is inconsistent that we should not be protected commensurately.

Senator FORD. Well, I will say to you, Mr. Chairman, and to the witnesses that I would lend whatever ability I have to try to put together a package that would give some kind of protection to the employees. I do not know that we want to put a limit on golden parachutes, but there ought to be something there that in this kind of an unfriendly takeovers are bad, and in this day and age that really concerns me.

If you have got a little liquid, you are in a good company, you have operated well, you are doing the things right. All of a sudden somebody comes in and takes you over with your assets, not theirs. And it just really, really galls me about what happens.

Mr. YARKE. Well, we consider, Senator, that the employees of an airline, in particular being a service organization, is one of its most valuable assets.

Senator FORD. Well, I just pledge myself. The procedure of the Senate calls me.

The CHAIRMAN. Thank you both very much. We hope to mark the bill up tomorrow.

Mr. YARKE. Thank you.

Ms. MILLER. Thank you.

The CHAIRMAN. The committee stands adjourned.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. VINCENT C. SCHOEMEHL, JR., MAYOR—CITY OF ST. LOUIS

Mr. Chairman, I very much appreciate this opportunity to submit a statement urging you and your colleagues to immediately and agressively seek passage by the Congress of S. 1218, the International Aviation and Protection Act, the subject of your hearing today.

While my statement is partly an expression of parochial concerns, TWA being a major employer in St. Louis and its 200 flights a day being a great asset to our community, I believe the issues have nationwide implications due to the recent dramatic increases in hostile corporate takeovers.

Specifically in St. Louis, the world hub of TWA, a hostile takeover by any raider could disrupt 35 years of cooperation, which has produced 4,000 jobs, $250 million in payroll and other revenues, and air traffic representing 56 percent of the total at Lambert-St. Louis International Airport. The City of St. Louis has issued over $75 million in revenue bonds to help TWA expand, and we recently completed a $150 million airfield and terminal expansion plan partly as a result of TWA's growth in St. Louis. In addition, TWA pays $8.8 million to the city in annual landing fees, over half of all those collected.

The City of St. Louis has worked very closely with TWA management to build TWA's St. Louis hub into one of the most efficient and modern in the nation. In contrast, records of corporate speculators raise many questions in our mind as to future plans for TWA, its employees, assets, and operations and possible lack of experience in running an airline.

Stockholders, if they consider only their monetary interests, which end with the sale of their stock, appear likely to accept a hostile offer. That action seems understandable, given the rise in price of their stock.

But when the public has a large, direct interest in the actions of a corporation, not only in terms of huge public investments and thousands of jobs but also in the safety of millions who use the corporation's services, and that corporation has proven over many years it can meet those interests, then those public interests must be considered before stockholders can be allowed to risk them for personal economic gain.

The stockholders have no economic interest in whether a given individual can run an airline well. The stockholders' economic interest is only whether or not they are getting a satisfactory price for their shares.

A sharp reduction of TWA's presence in St. Louis would make it extremely difficult, if not impossible, for the city to meet many of its obligations for airport revenue bonds. Moreover, TWA's use of Lambert as its domestic hub has enhanced the desirability of our entire metro area from a business development and location standpoint. The ability of business people to get almost anywhere, anytime, has been enhanced recently by the beginning of daily non-stop flights to Paris, Frankfurt, and London. These international certificates, I might add, were very hard to secure in the first place.

Before I conclude, I wish to thank you again for this opportunity to testify on this important matter. I hope the committee will act swiftly in sending this vital legislation to the Senate as soon as possible. It is now very apparent that immediate Congressional review of hostile corporate takeovers is appropriate, particularly when they involve air commerce and raise quesions about the real intent of Congress in passing the Airline Deregulation Act. Passage of S. 1218 would ensure the protection of valuable international aviation routes.

STATEMENT OF JOHN D. SOLOMON, DIRECTOR OF AVIATION, CLARK COUNTY, NV

I am John D. Solomon, Director of Aviation, Clark County, Nevada. Clark County is the owner and operator of McCarran International Airport which provides for the air transportation needs of the City of Las Vegas and its service area.

I am submitting this statement in support of S. 1218, the International Air Transportation Protection Act of 1985, which provides for the revocation of international air transportation certificates in the event of a hostile takeover of an air carrier such as the proposed Icahn acquisition of Trans World Airlines if the acquisition is for the purpose of sale of such certificates and liquidation of the carrier.

TWA has long been an important carrier at Las Vegas, providing service in a number of vital domestic markets. Through its international operations, it also makes available to Las Vegas one carrier service to many significant foreign points. TWA currently carries about 400,000 Las Vegas passengers each year.

About 40 percent of all Las Vegas' visitors come by air and consequently the loss of a major air carrier would severely impact the area's economy which is heavily dependent upon tourism. TWA's loss would be exeptionally damaging because the carrier is such an important source of foreign visitors to Las Vegas.

Clark County is thus greatly concerned over any acquisition such as the Icahn effort which would threaten TWA's existence. When the deregulation legislation was passed in 1978, it was not contemplated that it would open the door for financial game playing with the assets of major air carriers. The legislation was designed to promote competition, not to lessen it. Clark County believes that if acquisitions such as the Icahn proposal are permitted to achieve their apparent objective of dismantling one of the nation's most important air carriers, it would be a grave setback for deregulation since the public outcry would undoubtedly cause the beginning of efforts to reregulate the industry. Deregulation has brought many benefits to this country in terms of greater competition, improved service and lower fares. It would be highly unfortunate if these benefits were to be eliminated and a new regulatory scheme imposed because action was not taken to prevent a clear abuse of the present deregulated environment.

Accordingly, Clark County supports efforts like S. 1218 which are designed to prevent destruction of major international carriers such as TWA and to preserve the airline competition which deregulation was intended to achieve.

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